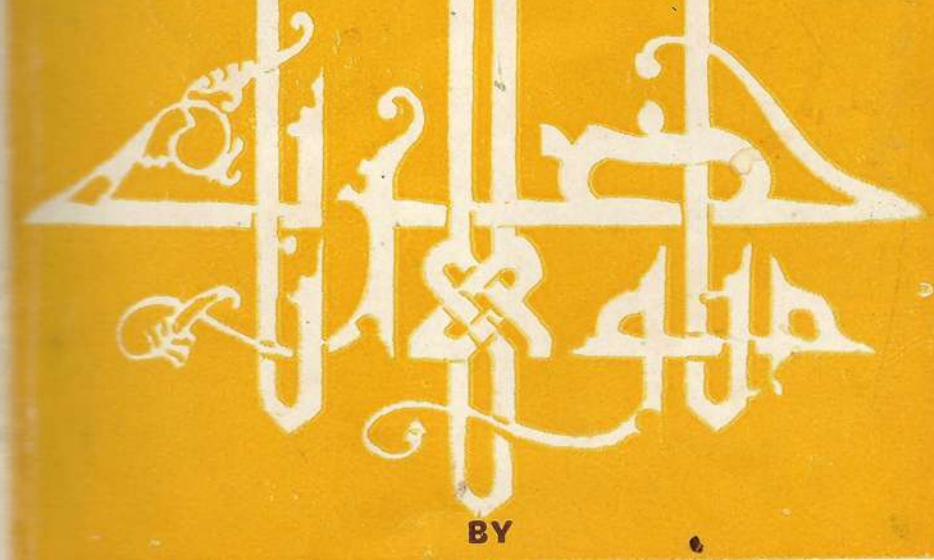
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THE PROPHET'S Establishing A State And His Succession



BY
MUHAMMAD HAMIDULLAH

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The Prophet's Establishing A State And His Succession

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Bismillah

PREFACE

All praise to God, Creator and Sovereign of the universe; and Divine blessings and Mercy on the last of the Prophets who set a model to imitate in all walks of life, from king to clown.

There is a renaissance of science among contemporary Muslims. It is time perhaps that we study anew how the Holy Prophet founded a State, how he governed it and how its continuity, through succession, was assured.

In collecting here my humble studies, on certain aspects only of the problem, my only ambition is to focus attention of scholars to some new interpretations of old and well-known facts. They have come to my mind, yet I do not insist on them. I believe in the survival of the fittest.

I hope I have offended nobody and hurt feelings of none, since such has not been my intention, I wishing only the service of the science and search of the truth. "Lord, increase me in knowledge". Lord, help us all in the path of Thy pleasure !

Paris, **M. Hamidullah**

17th Ramadan, 1404 H.

The Quranic Conception of the State

It was a remarkable phenomenon when the Arabian peninsula, at no time in history brought under one way, recognized unanimously the spiritual and temporal overlordship of the Prophet Muhammad. This tremendous achievement in anarchic Arabia was moreover the result of only ten years' activity. The Prophet was guided by divine revelations, a collection of which we possess in the form of the Holy Qur'an. If one studies closely his life, one will have little difficulty in agreeing with the remark of his wife that the Qur'an is the mirror of his character. كان خلقه القرآن Therefore the conception of State which he had and which he imposed on his followers may easily be traced in the verses of this sacred book.

It is significant that the Qur'an not only refers to the stories of the prophets of bye-gone ages but also recognizes their validity in so far as they are not expressly contradicted by the Qur'an itself. In other words, the *sunnah* of ancient prophets is also binding upon the Muslim community unless the contrary is laid down in the Book or the Traditions, see for example :

> "Those[1] are they unto whom We gave the Scripture and command and Prophethood. But if these people disbelieve therein, then indeed We shall entrust it to a people who will not be disbelievers therein. Those are they whom God guideth, *so follow their guidance.* (Q. 6 : 89-90, cf. also 42 : 13).

1. In the preceding verses some 18 prophets are named including Noah, Abraham, Ishmael, Moses, Aaron and Jesus.

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The Imams al-Bukhari and at-Tirmidhi have recorded that the Prophet followed the practices of the people of the Scripture rather than the pagan Arab customs in matters in which he had received no direct revelations.

The same is true regarding the state. We shall begin with history and see how according to the Qur'an, the ancient people were ruled.

In the history of the development of human society the State is rather a late institution. According to the Qur'anic chronology, Adam the first man, was also destined to play the role of the lieutenant or agent (khalifah) of God on earth. As the father of the only human family; he had no rivals in that position. The following generations lived an anarchic and materialistic life. Therefore, according to the Quran prophets were sent among them who served as intermediaries between God and men, and pointed out to them what the will of their Creator was and exhorted them to do good and to abstain from evil. The role of well-wishing and disinterested counsellors which these prophets played, did not in fact concern any State but only communities, apparently devoid of any political superiors. It was not states which were then replaced one by another but one people gave place to another people. وما آخرين Of course, the Qur'an does not neglect their economic and social activities but mentions them only to remind men of the beneficence of their Lord and their duties towards Him.

It is since the time of Abraham, that the Qur'an shows any notion of the personality of sovereign in human society. The sovereign possessed and exercised the power of life and death over his subjects (cf. 2:258). With Joseph however the idea of state attains a higher degree of development. In his days (12:30) there were kings and ministers and state-prisons.

From the Qur'anic description of the life of Moses, we learn that this great leader of the Israelites had designs of establishing a state but he was disappointed in his own people and was forced to wait until a new generation trained under him took their place before conquering the Promised Land. The Pharoah of the time of Moses is represented as a veritable king who ruled with the help of a minister and with the advice of a council of elders. The Qur'anic description of the functioning of this Council leaves the impression that it did not take hasty resolutions nor give orders thoughtlessly. It stood rather for indulgence and moderation even in the case of innovators. Morever; even a community seemed to possess in those days a certain political education, as for instance when a man reproached Moses that the latter was becoming a tyrant instead of a reformer and a benefactor to his folk. (Q. 28:19).

The story of Talut (king Saul) in the Qur'an has a singular interest. The Israelites had been defeated by their enemy and driven out of their country. Their desire to avenge induced them to ask their prophet to select a king under whom they would wage war against their enemy :

> "Bethink thee of the leaders of the Children of Israel after Moses, how they said unto a Prophet whom they had: Set up for us a king and we will fight in Allah's way. He said: Would ye then refrain from fighting if fighting were prescribed for you? They said: Why should we not fight in Allah's way when we have been driven from our dwellings with our children? Yet, when fighting was prescribed for them, they turned away, all save a few of them. Allah is aware of evil-doers".
>
> Their Prophet said unto them : "Lo! Allah hath raised up Saul to be a king for you. They said : How can he have kingdom over us when we are more deserving of the kingdom than he is, since he

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hath not been given wealth enough? He said: Lo! Allah hath chosen him above you, and hath increased him abundantly in wisdom and stature. Allah bestoweth His sovereignty on whom He will. Allah is All-Embracing, All-knowing",
(Q. 2:246-47).

Among other significations, this passage shows that knowledge and sagacity together with physical culture, and not riches or birth, are the requisites of a king. It shows further that the Israelites of that epoch recognized a distinction between Church and State. Nevertheless David and Solomon, the immediate successors of Talut (Saul) possessed the spiritual rank of a prophet as well as the temporal power of a king.

As for David, the details of his life in the Qur'an are very important, for they mention particularly the duties of the king, the most prominent of which is the administration of justice:

(a) ...and David slew Goliath; and God gave him the kingdom[1] and the wisdom...(Q. 2:251).

(b) We made his kingdom strong and gave him wisdom and decisive speech. (Q. 38:20).

(c) O David! Lo! We have set thee as a viceroy in the earth; therefore judge aright between mankind, and follow not desire that it beguile thee from the way of God. Lo! those who wander from the way of God have an awful doom, forasmuch as they forgot the Day of Reckoning. (Q. 38 26).

"Solomon was David's heir" ...(Q. 27:16). Although the son succeeded the father, yet it was not for the Qur'an a question of the *right* of inheritance; the grace of God is the only source of power.

1. Kasimerski (*Le Koran*, I p. 37, ed. 1925) has translated here the word "mulk" (kingdom) into "book" and has added a note to the effect that the book referred there to the Psalms of David. (foot note page 14)

One of the most illuminating passages where the functioning of government is described, is the one in which the story of the Queen of Sheba is narrated:

"She said: O chieftains! Pronounce for me in my case. I decide no case till ye are present with me.

They said: We are lords of might and lords of great prowess, but it is for thee to command, so consider what thou wilt command.

She said: Lo! kings, when they enter a township, ruin it and make the honour of its people shame. Thus will they do.

But lo! I am going to send a present unto them, and to see with what (answer) the messengers return.

So when the envoy came unto Solomon, (the King) said: What! Would ye help me with wealth? But that which Allah hath given me is better than that which He hath given you. Nay it is ye (and not I) who exult in your gift.

Return unto them. We verily shall come unto them with hosts that they cannot resist, and we shall drive them out from thence with shame, and they will be abased." (Q. 27:32-37).

The necessity of a code of laws for a political agglomeration of men has always been recognized. The kitab of which so much is mentioned in the Qur'an as having been given to the prophets, literally means the prescription. Again, as soon as the Israelites arrived safe and sound out of the territory of the Pharoah, God favoured Moses with engraved tablets of laws and enjoined upon the Israelites to hold fast to them.

Moreover, the Qur'an has condemned on several occasions the unjust and unjustifiable acts of oppressive kings. (Q. 18:80;

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28:4). And one thing which is most striking in the narratives of the Qur'an, is that the king seems to possess far greater importance than the kingdom or as we might say the State: the idea of the king is predominant and that of the state is only incidental. Such was perhaps the notion in those by-gone days.

We have so far confirmed our investigations to the state in ancient times. It does not mean, however, that nothing can be gathered about the Muslim state which the Prophet was establishing with so much difficulty. A classified treatment of the material would be helpful.

It must be noted that the divine origin of all authority is never lost sight of but the notion of the Day of Judgment has not been without limitations on the exercise of otherwise inevitable autocracy. Again, if sometimes territory has been mentioned by the side of power, it seems to have been incidental rather than essential.

> "Say : O God! Owner of Sovereignty! Thou givest sovereignty unto whom Thou wilt and Thou withdrawest Sovereignty from whom Thou wilt. Thou exaltest whom Thou wilt, and Thou abasest whom Thou wilt. In Thy hand is the good. Lo! Thou art able to do all things." (Q. 3:26).
>
> "He it is who hath placed you as viceroys of the earth and hath exalted some of you in rank above others, that He may try you by (the test of) that which He hath given you... (Q. 6:166).
>
> And We have given you (mankind) power in the earth, and appointed for you therein a livelihood. (Q. 7:10).

But Prof. Nallino of Rome has no hesitation in believing that the Muslim institution of bai'ah بيعة contains the germ

of fidelity to the monarch on his accession to power, a sort of Social Contract. He says :

> "Le fait de conferer la dignite de calife est considere, par ler juristes comme un contrat, passeentre celui qui accepte la charge et la communaute musulmane; ce contrat n'est parfait que s'il ya eu la bai'ah ou acte d'hmmage de la part des represe ntants de la communaute." (p. 11, Notes sur la nature du califat en general et sur le, pretendu Califat Ottoman, Rome, 1919).

The word bai'ah itself means a contract; and technically it signifies the offer of fidelity and allegiance on the one part and the acceptance of this offer on the other (cf Q. 48:10-18; 60:12). In other words, the authority of the monarch depends upon if not actually emanates from, the volonty of the public.

Although for some generations after the Prophet, the Muslims believed as an article of faith the impeccability of the Divine Messengers, عصمة لانبياء nobody ever admitted that the successors (Khalifahs) of the Prophet had possessed the same privilege. It is for this reason, that the principle the king can do no wrong was never accepted by the Muslims. They boast of the fact that even the Prophet himself was subject fo the same laws in inter-human affairs حقوق العباد and heard against his own person many a case of tort and civil wrong. His impeccability was confined to the deliverance of the message of God and the mission of Islam. In other respects, he was a man and was always considered as such. Politically he is a member of the Muslim community and subject to the same laws.

ALLEGIANCE

The importance of obedience to authority has been emphasised in the most unequivocal words in the Qur'an :

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"O ye who believe! Obey God, and obey the Messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to God and the Messenger if ye are (in truth) believers in God and the Last Day. That is better and more seemly in the end." (Q. 4:59).

"And if any tidings whether of safety or fear, come unto them, they noise it abroad, whereas if they had referred it to the Messenger and such of them as are in authority, those among them who are able to think out the matter would have known it." (Q. 4:83).

The obedience to the person of the Prophet has more frequently been emphasised, sometimes in an authoritative way and sometimes in persuasive terms. This was responsible for the enormous craze in later times to compile the traditions of the Prophet. For instance :

"And whatsoever the Messenger giveth you, take it and whatsoever he forbiddeth, abstain from it." (Q. 59:7).

"Verily in the Messenger of God ye have a good example (to imitate) for him who looketh unto God and the Last Day; and remembereth God much." (Q. 33:21).

"O ye who believe! Obey God and His messenger and turn not away from him when ye hear (him speak)... And obey God and His messenger, and dispute not one with another lest ye falter and your wind[1] (strength) depart (from you); but be steadfast! lo! God is with the steadfast." (Q. 8:20, 46).

1. This is a nautical metaphor. Your wind will depart (from your sails) means in fact your strength will disappear.

In his book on the Caliphate, Arnold has rightly acknowledged that this one-sided emphasis on the duty of the subjects without the correlative duty of the ruler, did not turn a Muslim monarch into a tyrant, thanks to the notion of resurrection and the peculiar character of Muslim law. Nevertheless in not a few passages has this duty of the ruler been emphasised in the Qur'an: (e. g. Q. 42:15, 7.6).

Unto this, then summon (O Muhammad). And be thou upright as thou art commanded, and follow not their lusts, but say: I believe in whatever scripture Allah hath sent down, and I am commanded to be just among you. Allah is our Lord and your Lord. Unto us our works and unto you your works; no argument between us and you. Allah will bring us together, and unto Him is the journeying. (Q. 42:15)

Then verily we shall question those unto whom (Our message) hath been sent, and verily we shall question the messengers. (Q. 7:6).

Again, the interests of the state must have a priority over private interests: (cf. Q. 8:27-28, 9:24).

O ye who believe! Betray not Allah and His messenger, nor knowingly betray your trusts.

And know that your possessions and your children are a test, and that with Allah is immense reward.

It may incidentally be remarked that patriotism in Islam consists of a politico-religious unity and not of a geographical or ethnological nationality whatsoever :

"O mankind! Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo! the noblest of you in the sight of God, is the best in conduct. Lo! God is Knower, Aware. (Q. 49 : 13).

"The believers are naught else but brothers." (Q.49:10).

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And hold fast, all of you together, to the cable of Allah, and do not separate. And remember Allah's favour unto you; how ye were enemies and He made friendship between your hearts so that ye became as brothers by His grace; and (how) ye were upon the brink of an abyss of fire, and He did save you from it. Thus Allah maketh clear His revelations unto you, that haply ye may be guided.

And there may spring from you a nation who invite to goodness, and enjoin right conduct and forbid indecency. Such are they who are successful. (Q. 3 103).

It goes without saying that Islam disclaims any class distinction on account of birth.

ADMINISTRATION OF JUSTICE

This is a primary duty of the sovereign: he must be impartial and just. (cf Q. 16:90, 4:58, 135; 5:8, 16, 40).

The non-Muslim subjects ought to be given juridical autonomy, and if they appeal to the Muslim courts, they should receive justice and equity. (cf. Q. 5:42-45).

PARLIAMENTARISM

The ruler must conduct public affairs in consultation :

And consult with them upon the conduct of affairs. And when Thou art resolved, then put thy trust in God. Lo! God loveth those who put their trust in Him. (Q. 3:159).

"Now whatever ye have been given is but a passing comfort for the life of the world and that which God hath is better and more lasting for those who believe and put their trust in their Lord...And those whose affairs are a matter of counsel, and who spend of what we have bestowed on them." (Q. 42:36-38).

Nevertheless, it is to be observed that the veto seems to have been retained by the ruler. (cf Q. 6:117).

LEGISLATION

The Qur'an recognizes the validity and the binding character of all that the Prophet said or did. (Q. 53:3-4, 59:7). This rendered the task of the Muslim legislator easier. For, the Prophet himself practised and allowed discretion and analogical deduction in matters not expressly provided for in the Qur'an. Although the Qur'an and the Hadith (traditions) could not be abrogated by qiyas or analogical deduction, yet enough margin was left for individual interpretation and the recognition of the possibility of a Mujtahid, one exercising the right of private judgment, committing mistakes. المجتهد يخطى و يصيب

In other words, the permission thus given of replacing one deduction by a later and better one, rendered Muslim law sufficiently elastic and it continued to be so, until degeneracy befell later Muslim jurisconsults who themselves disclaimed any power of qiyas or deduction as against the deductions of the classical jurisconsults.

RULES FOR THE CONDUCT OF THE STATE

It may be considered strange that one should find in the Qur'an germs of international law and provisions for the guidance of the State in times of war, peace and neutrality, but we have to remember that the Prophet himself was responsible for the creation of a State out of the anarchy prevailing in Arabia and the unification of Arab tribes under one sole authority in order to turn them into the world's greatest conquering and colonizing nation. He dispelled from their minds their inferiority complex, and inculcated healthy ideas of superiority and self-consciousness :

"Ye are the best people that hath been raised up for mankind. Ye enjoin right conduct and forbid indecency." (Q. 3:110 cf also 3:19, 85).

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"Sanction is given unto those who are fought, because they have been wronged...those who, if We give them power in the land, establish worship and pay the property-tax (zakat) and enjoin kindness and forbid inequity." (22 39-41).

"And fight them until discord (fitnah) is no more and religion is all for God." (8 39).

"And We have not sent thee O Muhammad save as a bringer of good tidings and a warner unto all mankind; but most of mankind know not." (Q. 34:28).

Perhaps this was the original impetus to the Muslim idea of reducing the world to the Kingdom of God. The idea of jihad as may be gathered from the above and all other relevant passages, has not been to exploit and plunder people reluctant to agree to any of the choices in the triple formula of "Islam, Submission or Sword." On the other hand, it was considered a sublime duty though arduous, to help fellow human beings to return to the right path, and civilize them. It was a selfless burden cheerfully born for the sake of God and humanity. There are numerous commandments in the Qur'an concerning what may be called public international law or the conduct of the Muslim state in times of war, peace and neutrality. A detailed study of this is not possible here[1] but mention may be made of such varied subjects as reprisals (2 : 190-95), observance of treaties (9:7), defence (4:75, 22:39-41), sympathetic wars (8 : 72), threatened infraction of treaties (8 58), religious tolerance (2 : 256, 109 : 6, 62, 3:64), non-Muslim subjects (9:29), treatment of prisoners (47:4, 76:8-9), grant of asylum (9:6), con-

1. An English translation of Dr. Hamidullah's German thesis on Muslim International Law is now under preparation. His article on Neutrality in Muslim International Law has recently been published in ZDMG, Leipzig.

P. S. Since the publication of this study, the above-mentioned thesis has also appeared under the title of "Muslim Conduct of State."

quered territory (7:10), peace (8:61), neutrality (4:88-91, 59 : 11-12 9:4, 60:8-9) etc, etc.

NATIONAL WEALTH

"...So that it may not circulate (only) among the rich among you."

This is the key-note of the Qur'anic policy concerning national wealth. Hence the distribution of wealth among all classes has been emphasised in all economic laws of Islam. The institution of a property tax (zakat) and restrictions on the power of testamentary disposition of one's property in order to safeguard the rights of near relatives the declaration of the statutory rights of the poor in the state income (8:41 & 60), and above all, the prohibition of usury all tend to the same objective.

PUBLIC MORALS

Religion and politics are two distinct spheres. They cannot be unified. At the same time, it is true that their separation has done incalculable harm to humanity. Islam has found out and successfully practised a formula of reconciliation, viz. although each of them appertains to a different sphere of activity, the source of both should be the same, that is, the Qur'an, the Hadith and justice, equity and good conscience.

POLITICAL NOMENCLATURE

Islamic polity has borrowed the terms *ummah* and *millah* (political community) and *khalifah* and *imam* (head of the politico-religious community) from the Qur'an. (Q. 42:8 cf. Ibn Hisham *Sirah*, article 2 of the text of the constitution of the first Muslim political community drafted by the Prophet himself p. 341; the text of this important document is also to be found in Abu 'Ubaid's *Kitab al Amwal* recently published in Egypt p. 517 and as for the word *khalifah* see 38:27 and for *imam* 2:124 etc).

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SUCCESSION TO POWER

With the term *khalifah* (caliph) we come to the most thorny question of succession to power in Islam. This is the crucial point on which two important parties of Muslims have been diverging for over 1300 years and which has divided them into two hostile camps. The Islam which was brought by the Prophet did not say, much less insist upon it as an article of faith, who should succeed the Prophet when he died. But unfortunately just the opposite has been the case. Extremist views have prevailed in both the rival camps. A new note has been struck recently which deserves serious attention on both sides. The Sunnis and the Shi'ahs both agree that Ali did not historically and chronologically succeed in power to the Prophet; both agree that Ali was the immediate successor of the Prophet in spiritual affairs.[1] Now the question whether Ali had the right to be the immediate *political* successor of the Prophet is a matter for academic discussion and not a problem of practical politics.

1. Practically all the Sufi schools of thought like the Chishtiyah, Qadriyah and the Suhrawardiyah receive their authority from the Prophet through Ali directly without any other intermediary.

(With acknowledgement to the monthly *Quranic World*, Hyderabad-Deccan, II/i, 1936).

Conception of State in Islam

Islamic State, to me, means only the one the Muslims had in the time of the Prophet and his Rightly Guided caliphs. For, if the Holy Quran (33/21) says : "There has been for you in the Messenger of God a beautiful model to follow", the Prophet himself has said (cf Abu Dawud, 39/5): "It is incumbent on you to follow my conduct and the conduct of the rightly guided caliphs after me". The political life is not excluded from this obligation, since—and fortunately for Islam—the Prophet has left, among other things, his conduct in founding and governing a State also.

STATE IN HISTORY

The Holy Quran (6/83-90) names illustratively about a score of prophets, and then says : "It is they that God has guided; so follow their guidance" (O Muhammad). So the conduct of ancient prophets also remains in vigour among Muslims, except if a prophetic conduct is modified or abrogated by a later prophet. In the study of the past history of human society we shall concentrate on the institution of State.

It is presumed that human beings, in the beginning, lived in small but independent families, consisting of father, mother and minor children; in certain cases, perhaps also elderly grandparents.

To defend themselves better against more powerful enemies, one saw several families united themselves into clans. Conflicting clans produced tribes which in turn brought into existence City-States, then States, and Empires. A world-state has been attempted to several times, by ambitious adventurers, but so far it remains an ideal, a dream.

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The Holy Quran knows kings at least since the time of the prophet Ibrahim. The tyrannical Namrud of his time, (Hammurabi, they think), had pretentions to Divinity, and "punished" prophet Ibrahim by throwing him alive into fire. Saved unhurt miraculously, he was banished by his own father; and he and his nephew prophet Lut went to Palestine—prophet Ibrahim went also to Egypt—and everywhere he found unscrupulous kings, who even murdered people to usurp their beautiful wives.

A Syrian dynasty is said to be ruling in Egypt, when the great-grand-son of prophet Ibrahim, namely prophet Yusuf was brought there, and sold to the minister *(aziz)*. His piety caused him jail, but later the king found in him a very useful person, and appointed him the officer in charge of the State treasury, and the prophet Yusuf could cause his father, along with the whole family, to come and settle in Egypt. His father, prophet Ya'qub was also called Isra'il, and his descendents are still called Israelites, (also Jews).

Soon the dynasty changed, and the new rulers persecuted those who were the favourites of yesterday. Several generations later, prophet Harun and his younger brother prophet Musa were born in Egypt. The Quran describes that the ruler of Egypt, (Fir'aun, Pharaoh) had a consultative council, which does not seem to precipitate (cf Quran 7/111, 28/20), but deliberate coolly, and advise all that is just, in matters even of a religion other than the religion of the ruler. However the ruler had pretentions to Divinity, and tolerated no freedom of conscience even to his country men (7/123-124). The despairing prophets plan a mass emigration of the Israelites. The king would not allow that, and would persue them in their flight, but he and his army would die drawned, apparently in the Nile Delta (where the Jews lived), and the fugitives reached safe in the Sinai peninsula. There they spent over forty years in wilderness (5/26). There we see a division of powers between the two co-prophets : to the elder brother, Harun, belonging the cult and leading of prayers; and to the younger, Musa, the

general affairs of the community, as the Bible mentions. The prophet Harun will be the *lieutenant* of the prophet Musa, when this latter would go on the summit of the Mount Sinai for a pious retreat of 40 days, according to the Holy Quran (7/142). There is question of a *proportional representation of the population* also, (cf 7/155), and 70 Israelites were chosen by prophet Musa to accompany him on an appointment with God. There is however no precision as to the method of this selection.

There is question of a certain Musa and a king who tyrannically usurped good boats of foreigners (Qur'an 18/79). According to some Tabi'un (successors of the companions of the Prophet), this does not concern the prophet Musa, but someone else; the Bible is also silent on this story of Khadir.

Later under the successors of prophet Musa, the Israelites began making incursions in the neighbouring Palestine, treating cruelly, — even committing genocide of, — those who defended themselves. Gradually the Israelites conquered part of Palestine, and established there a small State, often in war with the neighbours. There are only allusions in the Quran (17/5) of the attack of the Babylonian Nabukhodonossor on Palestine, and, victorious, how he treated the Jews.

Long afterwards the prophet Ishmu'il (Samuel) is born among them, in Palestine. The Qur'an speaks of him (2/246ff), without mentioning his name. His is a picturesque personality: In his old age, the Jews want to fight some enemy, and request their prophet to nominate a king for them in order to lead them in war. Note *a king in the presence of a prophet !* This implies the separation of church and State, and a renewal, so to say, of the political set up in the time of the co-prophets Harun and Musa. That is not all.

The Bible (I-Samuel, 8/11-18) adds that in order to dissuade the Israelites from insisting on a kingship, the prophet told them :

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"This will be the manner of the king that shall reign over you. He will take your sons and appoint them for himself, for his chariots, and to be horsemen; and some of them shall run before his chariots. And he will appoint him captains over thousands, and captains over fifties; and will set them to ear his ground, and to reap his harvest, and to make his instruments of war, and instruments of his chariots. And he will take your daughters to be confectionaries, and to be cooks and to be bakers. And he will take over your fields, and your vineyards, and your oliveyards, even the best of them, and give them to his servants. And he will take the tenth of your seeds, and of your vineyards, and give to his officers, and to his servants. And he will take your menservants and your maidservants, and your goodliest youngmen and your asses, and put them to his work. He will take the tenth of your sheep; and ye shall be his servants. And ye shall cry out in that day because of your king which ye shall have chosen; and the Lord will not hear you in that day".

Nevertheless the people refused to obey the voice of their prophet. The Bible continues (I-Samuel' 10/25) :

> "Then Samuel told the people the manner of the kingdom, *and wrote it in a book*, and laid it up before the Lord..."

Obviously all this was an ironical way of dissuading them from a kingship. Anyhow, if correct, a *written-constitution of a State* is found in the practice of one of the ancient prophets.

The name of this king nominated by the prophet Ishmu'il was Talut according to the Qur'an, and Saul according to the Bible. May be that Talut, which etymologically means an overlord, a king, is an epithet.

After Talut, his son-in-law prophet Dawud succeeded to power. He was both prophet and king according to the Qur'an, and only a king according to the Bible. He was succeeded later by his son, prophet-king Sulaiman according to the Quran, only

king Sulaiman according to the Bible. The Quran (27/15) employs the significant words : "And Sulaiman inherited Dawud ..." The son inherits his father's kingdom. Father and son both are prophets, so there is no possibility of condemning their conduct, in Islam, far from that.

Under prophet Sulaiman there is the celebrated story of Bilqis, queen of Saba (Sheba, in the Bible), which is in Yemen. According to the Quran (27/32-33), she had a Council of State, and she had the right of veto. Further (27/44) : she "embraced Islam at the hand of prophet Sulaiman." Apparently she later returned back home to Yemen, and continued to rule till her death. The Quran (27/34) quotes her words of experience and political knowledge : "The kings when they enter a (conquered) town, they dispoil it, and make the most powerful of its people its meanest; and thus will they (always) do." Naturally good and bad will there always be; but by quoting her opinion, the Quran does not at all mean that kingship if to be condemned, since prophet Sulaiman is himself a king. Incidentally it may be brought in relief, that the Quran authorizes a woman to be the head of the State. The well-known saying of the Prophet Muhammad of blessed memory, who on hearing that a woman had been chosen to be the ruler of Iran, had uttered: "Never shall prosper a people that has confided its political commandment to a woman", does not contradict the permissibility of women rulers. It was a prediction, that soon realized, and no precept on the part of the Holy Prophet.

The prophet 'Isa (Jesus) was born in Palestine when it was under Roman domination. He despised politics, and went so far as to say : "My kingdom is not of this world", as is reported by St John (16/36). There is a contradictory report also in St Luke (19/27) : "But those mine enemies which would not that I should reign over them, bring hither, and slay them before me". Which is abrogating and which is abrogated, we cannot say.

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MECCA AT THE DAWN OF ISLAM :

When the Prophet of Islam was born in 569 at Mecca, the political situation in the world was very complex, and differed from place to place; there were mighty empires in Byzantium and Mada'in (Ctesiphon), there were numberless smaller states all over the world, of which Abyssinia had close relations with Arabia and even with Mecca. And there was a tiny City-State in Mecca; there was however no centralized administration in Madinah, where there was a vacuum and chaos on account of *bellum omnium contra omnes*. There were nomadic tribes, wandering all over the Arabian Peninsula.

There was neither a monarchy nor a republic at Mecca, but a sort of oligarchy as described by Ibn 'Abd Rabbih (al-'Iqd al-Farid). There were ten principal tribes in the town, the hereditary head of each of them was responsible for one of the municipal functions, to wit :

1. Drinking water for pilgrims.
2. Banner in an independent war.
3. Tax to aid pilgrims.
4. Flag during a war along with allies, and house of parliament.
5. Senate.
6. Justice in cases of tort.
7. Cavalry during war.
8. Foreign relations.
9. Deciding choice by holy arrows.
10. Justice of penal cases, and guardianship of offerings to the temple of the Ka'bah.

Nº 1 belonged to Prophet's family, Nº 2 to Abu Sufyan's, Nº 4 to Mus'ab ibn 'Umair's, Nº 6 to Abu Bakr's, Nº 7 to Khalid ibn al-Walid's, Nº 8 to 'Umar ibn al-Khattab's, and so on and so forth. Before the Hijrah, Abu Bakr, 'Umar and Mus'ab embraced Islam. What was their position in the municipal council, we do not know. It is also not clear whether these "ministers" took their decisions with consultation in the council, or each one could do whatever he thought best, in the interest of the town.

Apart from these "official" members, there were at least four "associate" members; they were not of the tribe of the Quraish, and apparently most of them even did not live in Mecca all the Time : 1) Engineer-in-chief for the eventual reparations needed in the building of the temple of the Ka'bah; 2) Astronomer-general, for the intercalations in the lunar calendar of Mecca, in order that the months,—pilgrimage in particular,—do not get away from definite seasons; 3–4) controllers of rites of the pilgrimage at 'Arafat and Muzdalifah.

We do not know much about the method of the selection of the chief of a tribe. Apparently, at the death of a chief, the elders of the family assembled, and selected someone in his place for age, sagacity and opulence. May be the nomination by the deceased chief also weighed with the members of the tribe. Anyhow we know that 'Abdul-Muttalib was the chief of the Banu Hashim, and was succeeded by his son Abu Talib. Later, for monetary reasons, Abu Talib sold the well of Zamzam to his younger but richer brother al-'Abbas. Nevertheless when Abu Talib died, it was Abu Lahab, his another brother, who became the chief of the tribe, and it was he who "outlawed" the Prophet, and this latter was obliged to seek asylum elsewhere.

ISLAMIC STATE

When Islam began in December 609, with the first revelation of the Quran to the Prophet, it was Abu Talib who was the chief of the Banu Hashim, and as such one of the members of the Council of Ten. That did not prevent the rest of the leaders of the town to decide the boycott of the Banu Hashim; talking, commercial transactions, matrimonial relations, all was forbidden. Abu Talib and the relatives were obliged to leave the town and live in the suburbs. And "Muslims and non-Muslims of the tribe, all showed solidarity, except Abu Lahab, who left the tribe, and lived in Mecca along with the enemies of his family, enemies of Islam", say the biographers.

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Before Islam, the Prophet participated in the life of his co-citizens, and was respected. For instance, when the building of the Ka'bah was rebuilt, he too worked as mason, alongwith other citizens; and it was he who arbitrated in the quarrel as who should have the honour of placing the holy Black Stone in its appropriate place. But when Islam began, all changed : he and his very slowly increasing followers saw nothing but opposition and persecutions. Naturally, for all their affairs, religious and non-religious, the Muslims referred to the Prophet, and not to the municipal council. We may qualify this situation as a "State in a State". These Muslims had a common chief who was habitually obeyed and whose decisions were executed; they had a law (the Quran which was in the course of revelation), there was an internal and organic solidarity among these Muslims, and their houses constituted, so to say, the territory of this state-in-a-state.

This Muslim "State" had foreign relations also, concurrently, of course, with the non-Muslim Meccan State. In fact when the persecution became too much, and even some Muslims, including women, were murdered, the Prophet advised his disciples to take refuge in the Christian Abyssinia. We possess part of the letter he sent, apparently through those who went in the first instance, and it read : "I have sent to thee my cousin Ja'far along with a number of Muslims; when he comes to thee, given them hospitality, and do not oppress (them)". The pagan Meccans naturally intervened, and sent their own ambassador to Abyssinia to demand extradition of the Muslims. The Negus of Abyssinia however refused that. The above-mentioned boycott was the consequence of the frustration of the Meccans.

When the boycott ended after several painful years, Abu Talib and Khadijah (uncle and wife of the Prophet) both died soon. Abu Lahab the new chief of the tribe decided,—of course arbitrarily, without consulting other members of the family,—to outlaw the Prophet. He went to Ta'if to seek asylum with some remote relatives, but in vain. He returned to Mecca, but not

in his own right,—he was no more a citizen,—on the contrary, he had to demand protection of some "full citizen" of Mecca, of course a non-Muslim. He could thus no more preach Islam in Mecca.

Providence came to his help. During the Hajj season, bloodshed was forbidden. Profiting by this situation, the Prophet preached Islam among foreign pilgrims. He succeeded to convince a group of six Madinah people; and they became so enthusiastic that they began preaching Islam in Madinah. At the time of the next annual pilgrimage, a dozen and more new Madinans came to embrace Islam. And the first stone of the foundation of the Islamic State was laid :

The Prophet, in consultation with the Madinan visitors, nominated 12 chiefs (naqib), one for each of the tribes they represented, and one of them, As'ad ibn Zurarah al-Khazraji, to be the chief-of-chiefs (naqib an-nuqaba), a sort of viceroy in Madinah. On their demand, a qualified missionary, Mus'ab ibn 'Umair was sent to Madinah, who succeeded so much that the following year as many as 72 Madinans came and declared their conversion, and invited the Prophet to emigrate and settle in Madinah. He accepted.

In the meanwhile two important events took place: (a) The Prophet gave a copy of the till-then-revealed Quran to a Madinan, who took it with him and recited publicly in the mosque of his tribe. That was the "code of Muslim law" so to say. (b) The Prophet wrote to his envoy, Mus'ab ibn 'Umair to assemble Muslims, men, women, children, all, every Friday, and together with a sermon, celebrate the Friday prayer of two rak'ats, in place of the Zuhr prayer. Religion and politics cannot be separated in Islam, and both are subject to the same code, the Quran.

City-State of Madinah

Unlike Mecca, there was in Madinah no state, neither big nor small; there were only tribes, with *bellum omnium contra omnes*,

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everybody fighting everybody ! When the Prophet came to Madinah in 622, he first paid attention to rehabilitate the Meccan refugees, and he succeeded in a twinkling of eye ; he suggested that each Madinan family fraternize a Meccan family, and this enlarged family would work together, earn together, and even inherit to the exclusion of blood relatives. (This last point was later abandoned).

Then he was obliged to pay attention to security and defense, since the Meccans had sent an ultimatum to Madinans: "either kill or expulse our enemy, Muhammad, or else we shall take necessary measures". The Prophet invited the chiefs of all the tribes, Muslims and non-Muslims, and suggested the constitution of a City-State of a confederal type, that is internal autonomy to each unit, with a few powers conferred on the central organism, particularly defense. Practically all agreed. In consultation with these representatives, a written-constitution of state was prepared; and it has come down to us, and is in fact the oldest written-constitution promulgated by a head of the state, in world history. On reading the text, we see that the Jews also had acceded to the City-State, and a clause said that they had autonomy and enjoyed as much liberty as the Muslims. In fact this autonomy concerned not only religion, but also judicial and juridical life : Muslim law was not applied if the parties were Jew, and no recourse had to be had to Muslim court even for appeal. It talks of a pyramidal system of social security, of solidarity against foreigners : enemy of one group was to be the enemy of each and all. Right of naturalization was recognized not for the centre, but for each citizen, who could fraternize with a foreigner and thus accord him citizenship as he himself had.

Since no State existed before in Madinah, all administrative organism had to be created and developed. Since there were feuds in Madinah population, a "foreigner" as the Prophet was, became easily the head of the State. There are no precisions either in the constitutional document or in history books. May be the Muslims founded a State among themselves, with

naturally the Prophet as its head, and others elements, like Jews and idolatrous Arabs, were invited to adhere and accede to it and enjoy its benefits.

Very soon afterwards, the Prophet began making excursions around Madinah, and he succeeded in persuading the non-Muslim tribes that lived there to enter into military alliance with the Madinah State. The cordon sanitaire increased the security of Madinah against Mecca. Thereafter the Prophet ordered that no Meccan caravan should traverse Muslim territory, which they were obliged to do, since the route from Mecca to Syria, Iraq and Egypt passed by Madinah. The Meccan refused to comply and wanted to force their way. This resulted in the wars of Badr, Uhud, and Khandaq, which exhausted the Meccans. Thereupon the Prophet offered them peace at their conditions, and the treaty of truce was concluded at Hudaibiyah, which incidentally separated Meccans from the Jews of Khaibar, both enemies of Islam, one in the North of Mecca and the other in the South, and Muslims being under "two fires". When the Meccans promised neutrality in case of Muslims' war with a third party, the Prophet got his hands free, and a few weeks afterwards he could occupy Khaibar, and get rid of the danger.

The Meccans violated the treaty of Hudaibiyah, and the punitive expedition resulted in the occupation of Mecca without any bloodshed. We see there both military and political sagacity : a) The Prophet asked Muslims not to assemble in Madinah, but remain ready in their tribal localities; the Prophet travelled zig-zag and no one knew where he was going, and at each stop he received a new contingent of volunteers. When he at least camped under the mountains of Mecca, this latter was taken surprised; and many other tactical moves resulted in the capture of Mecca without fighting. b) After occupation, he showed political sagacity : Heralds ran crying : whoever lays arms will be safe, whoever shuts himself in his house will be safe, whoever takes refuge in the house of Abu Sufyan will be

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safe (which fact must have increased confusion in Mecca; has Abu Sufyan also embraced Islam, they asked to themselves), and whoever goes in the compound of the Ka'bah will be safe. Thereafter another group of heralds ran crying in the street : All should assemble in the compound of Ka'bah, the Prophet wants to talk to them ! When people assembled, Muslims and non-Muslims, it was the time of Zuhr prayer. The Muezzin Bilal mounted the top of the Ka'bah and shouted the Adhan. When he pronounced the two shahadahs (unicity of God and messengership of Muhammad), a non-Muslim Meccan 'Attab ibn Asid, whispered in the ears of his comrade : "Thank God, my father is already dead, otherwise he would not have supported that a black donkey (sayidina Bilal) should bray on the top of the house of God!"—We shall revert to it.—After the prayer, the Prophet addressed the non-Muslim Meccans, reminded them what they had done since twenty years, and asked them what they expected then from him ? They lowered their heads in shame and said only this much : "You are a noble person, son of a noble person, and we expect a noble action from you". Promptly came the historic reply : "No responsibility lies on you today, go, you are relieved". It was so unexpected ! He could order their massacre for which he had right and also means to execute. He could plunder their property, he could reduce them to slavery. At the helm of power, he does not do that. The result ? Our 'Attab ibn Asid cannot control himself; he jumps up, and advancing towards the Prophet he shouts : "O Muhammad, I am 'Attab, (i.e. your ferocious enemy); ashhadu al-la ilaha illallah ashhadu anna Muhammadar rasulullah".

He was not the only person of that reaction. Over night the whole town embraced Islam, and forgot all animosity.

Very soon other regions of Arabia, of Southern Palestine and Southern Iraq began sharing pax islamica. Two years later, in 632, the Prophet breathed his last, and left to posterity a well-organised State. How it looked ?

Form of the Government :

If democracy means where sovereignty belongs to man, to the people, Islamic State cannot be that, since ultimate power belongs there to God. I hesitate to use the word "theocracy" which has acquired a sense which does not fully apply to the Islamic polity.

If republic means election of the head of the State for a fixed term, whereafter a new election is to be organized, the Islamic State was that neither in the time of the Prophet nor during the caliphate.

If monarchy means hereditary rule with a life term. That was also not the Islamic form.

A prophet is nominated by God, for life, and men individually recognize him as such, through what we call *bai'ah*, contract of specific relations. After the Prophet, in Islam that is not possible; there have been caliphs, who were not "independent" in the sense that they were bound by an unchangeable law (of the Quran and the Hadith).

I am tempted to suggest that the caliphate of the Rashidun was an amalgamation of monarchy and republic, election for life. This synthesis resembled the system of Arabian tribes, where selection of the chief was for life.

A regime can be unitary or composite. From its outset, the Islamic State was not unitary; there were autonomous Jewish tribes, with very little powers to the Centre. To me it is not even federal, but confederal, in the City-State of Madinah. Soon whole tribes were converted, and on their territory they enjoyed much autonomy, the only restriction being not to violate Quranic law. Then other complexities were added : Round the year 5 H., the Prophet sent a letter to a certain number of chieftains : Haudhah ibn 'Ali Dhu't-Taj in Najd, Jaifar and 'Abd, both son of al-Julanda, co-rulers in 'Uman. Both letters of proselytism told the addressees, if they embraced Islam,

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the Prophet would leave them continue to enjoy their ruling powers. Jaifar and 'Abd embraced Islam, and the Prophet contented to send a sort of Resident in their court, in the person of 'Amr ibn al-'As, who occupied himself with the affairs of Muslims and their education. Another letter went to al-Mundhir ibn Sawa of Bahrain (modern al-Ahsa) who was formerly a sort of governor under the Iranians. He embraced Islam, and became a sort of viceroy in the region. Badhan was the Persian governor in Yemen. When he embraced Islam, he was retained by the Prophet; and after him his son was recognized as the successor in the function of the governor of part of Yemen.

There seems to be a case of "personal union" also. One of the Negus, rulers of Abyssinia, seems to have embraced Islam, since at his death, the Prophet celebrated a funeral service *in absentia*, in Madina. There are no traces of his administrative subordination to the government of Madinah. After his death too, there is no question of rebellion, the succeeding Negus is not a Muslim, and he is not disturbed by Madinah.

A collegial government did actually not take place, but there was question of it, at the death of the Prophet : the Ansar suggested that there should be two caliphs, one from the Ansar and the other from the Muhajirun. But soon they agreed to the caliphate of Abu Bakr.

LEGISLATION :

For the Muslims, there was no code of legal rules in the beginning : the Quran had begun to be revealed, and it said : all is permitted except what the Quran or the Prophet prohibit. The volume of the Quran and the Hadith increased daily in the life time of the Prophet. So, we can say that the sources of Islamic law are the following :

1. Customs which are not contrary to the letter or spirit of the teaching of the Prophet; in case of doubt, one could refer to the Prophet.

2. The Quran, word of God, which can never be changed by any human authority.
3. The sayings and doings of the Prophet have practically the same authority as the Quran, if it is proved that they are authentic.
4. In case of the silence of the Quran and the Hadith, and in the absence of the Prophet, a Muslim is authorized to analogical deduction (qiyas).
5. Consensus or Ijma' did not exist in the time of the Prophet; it will come later. It has greater authority than the qiyas of an individual jurist, since Ijma' means the concurring opinions of the known jurists. It has not yet been institutionalized, and there is no possibility of knowing whether there is ijma' on a certain point or not. Great jurists, like imam al-Bazdawi and imam Fakhruddin ar-Razi are of the opinion that a later ijma' may abrogate a former ijma'.
6. SUNAN MAN QABLAKUM. Under this term, Muslim jurists say that laws of all ancient prophets remain in vigour in Islam with two reserves : firstly they have not been abrogated by a later prophet, particularly by the Quran and the Hadith; and secondly their existence and authenticity should be established beyond doubt, (for instance they are cited in the Quran or the Hadith).
7. Treaty obligations, as long as the treaty exists in vigour; and it binds the contracting parties only. (Treaty of Hudaibiyah for instance).
8. Reciprocity existed in the time of caliph 'Umar. Once a frontier customs officer asked him how much duty should be charged on foreign traders who want to come to the Islamic territory. The reply sent was : "Charge them as much as Muslim traders going to their territory are charged". I can discern that vaguely in the practice of the Prophet also : In the battle of Badr, he asked : who is the flag-bearer of the Quraish ? He

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was told that it was the hereditary flag-bearer from the tribe of Banu 'Abd al-Dar. The Prophet continued : We have greater obligation of giving the right to the rightful person; and he handed over the flag of the Muhajirun to Mus'ab ibn 'Umair, (although in the beginning he had given that to 'Ali).

DE JURE AND DE FACTO GOVERNMENTS :

We have seen above that in pre-Islamic Mecca there was an oligarchic City-State. When the Prophet was forced, under the plot of assassination, to emigrate and settle in Madinah, I have the impression that he considered himself and the Muhajirun as constituting the *de jure* State of Mecca, even though the pagans in Mecca had it *de facto*. I base myself on the fact that the flag of the Muhajirun was held by Mus'ab ibn 'Umair, both in the battle of Badr and battle of Uhud, in which last he fell martyr. Further, during the negotiations of Hudaibiyah, the Prophet asked 'Umar to go as his ambassador to Mecca; he excused himself, saying that he feared being assassinated in Mecca, and suggested that 'Uthman would be a better substitute. Again Abu Bakr was a legal advisor to the public, the Prophet having said : "in simple questions you may ask Abu Bakr, and he will tell what is Muslim law". When he conquered Mecca, it was he who confirmed al-'Abbas in the post of administering the well of Zamzam, and it was he who confirmed in his post the custodian of the key of the building of the Ka'bah.

THE RULER :

Individually no human being is able to do much. Hence the necessity to live in group, among friends. In this centripetal tendency clans, tribes, city-states, states, empires and other larger and larger units have come into existence,—and there will be no end to it until the whole world is definitely united under one single sceptre,—and everywhere obedience, willy nilly, to the central authority has been the basic and essential requirement althrough the political history of mankind. Islam will be no exception.

The Quran and the Hadith will not fail to lay most forceful stress on this need. For instance the Quran (8/46) will say : "And obey God and His messenger, and dispute not one with another, for you will thus falter and your wind will depart (from your sails), but be enduring. Lo! God is with the enduring". Since the Prophet is not immortal, his delegates and successors in authority will have the same privilege, and the Quran (4/59) will say that in most clear terms : "O ye who believe ! Obey God and obey the Messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to God and the Messenger if ye are (in truth) believers in God and the Last Day. That is better for you and (also) the best refuge."

In Islam rights and obligations are shared by everybody, and duties of Muslims are greater than those in other religions. According to Muslim, Tirmidhi, Abu Dawud, Nasa'i, Ibn Majah and others, the Prophet has said : "Whoever of you sees an evil let him try to change it by his hand (and force), if he cannot, then let him do that by his tongue, and if cannot do even that, then (at least) disapprove it in his heart, and that would be the feeblest (manifestation) of his Faith." The same realistic idea is formulated in another Hadith : If the ruler behaves well, he will have the Divine recompense and you should then be thankful; but if he behaves tyrannically (and you have no means to ameliorate the situation), then it is your duty to endure and the (tyrant) will be burdened with his sin.

Tyranny of the man in power is a very old story. The Quran (27/34) will put it disapprovingly in the mouth of the queen of Sheba : "Lo! kings, when they enter a township, ruin it and reduce its powerful persons to become the most humiliated. Thus will they do." The Bible (I-Samuel 8/11-18 and 10/25) seems even to admit it as a necessary evil when the Prophet Samuel will say that the king will exact forced labour from men and women, obligatory military service, confiscate fine pieces of land of rightful owners from his subjects, and take the tenth

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of the properties as tax, etc. "Then (the prophet) Samuel told the people the manner of the kingdom, and wrote it in a book, and laid it up before the Lord."

Islam's teaching will be more reasonable : It will insist on the duty of the subjects to obey the persons in authority, but its insistance will not be less on the duty of the chief to do justice. Of the very numerous verses commanding justice, one (4/135) says: "O ye who believe! Be most staunch in justice as witnesses for God, even though it be against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor, since God has priority over the both. So follow not passion, you will then lapse (from the truth); and if ye lapse or fall away, then lo! God is ever informed of what ye do." There is a saying of the Prophet of which the whole humanity must be proud, and it is reported by a very significant and impressive chain of narrators. So, in his *Tarikh Baghdad*, N° 5330, X, 187), the great traditionist al-Khatib al-Baghdadi reports : "Said the caliph al-Ma'mun, from his father caliph Harun ar-Rashid, from his father caliph al-Mahdi, from his father caliph al-Mansur, from his father, from 'Ikrimah, from Ibn 'Abbas, from Jarir ibn 'Abd-allah who said : I have heard the Prophet saying : the master of a people is their servant *(saiyid al-qaum khaadimuhum)*."

CONSULTATION :

Emphatic orders are given by the Quran for consultation in public affairs; and the practice of the Prophet has confirmed it.

Whom to consult ? The Prophet consulted the prominent persons from among the Ansar and the Muhajirun, but not only them : during the public deliberation any and every Muslim present could give his opinion, without hinderance. The captives of the battle of Hunain (Hawazin) were reduced to slavery, and as such distributed as booty among the members of the expedition. Later the Prophet decided to liberate them all, those that fell in the share of the government and those that

went to private soldiers. He appointed persons to consult each recipient of slaves individually.

So long as the society consisted of tribes based on blood relationship, the chief of the tribe was the natural and authorized spokesman. It soon began to disintegrate, giving place to other forms of unions, professional and other. The first "encroachment" began with the Hijrah. In Madinah, the number of Muhajirun was small, and they belonged to very diverse tribes, and even to non-Arabs, like the Abyssianian Bilal, the Greek Suhaib, the Iraqian Khabbab ibn al-Aratt, etc. In the constitution of the City-State, and its system of social security *(ma'aqil)*, all the Muhajirun are considered as members of one and the same "tribe", the tribe of the Muhajirun, a multi-national tribe, without distinction of race or language. This was the Islamic ideal, which was soon realized, but this was its beginning. Units of *ma'aqil* (social security) began soon to be based on professions, as our law books say. I humbly suggest that representatives should therefore be chosen on professional basis, and not regional. In the parliament there are questions of all professions, and unless there are specialists of each profession, the law may not be conform to requirements.

In the time of the Prophet, legislation remained no doubt in the hand of the Prophet, head of the State, but later the caliphs did not inherit it. On the contrary, it was private jurists who "promulgated" Muslim law, be that Sunni schools or Shi'a or else. In Islam, not only administration of justice is independent of the government, but even legislation. Government decisions are affected by political requirement of the hour, and nobody can dispute their authority; whereas if private jurists give vent their opinions, anybody can criticize and produce reasons to refute. Therein is served the interest of the public, and therein is the possibility of rapid growth and development of law. No doubt there have been sometimes public consultations at the initiative for instance of caliph 'Umar, before making some important decisions (such as the non-inclusion of conquered terri-

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tories in the category of simple booty to be distributed among the members of the army); but normally each and every savant remained free to opine and deduce laws.

We have pointed out that in the time of prophet Musa, we come across a sort of proportionate representation.

Question of veto is not easy to reply. But if powers and prerogatives of officials, from the head of the state downwards, are defined, one may by-pass the difficulty.

Since decentralization, according to religious communities, has been ordered by the Quran (5/47), history shows that non-Muslim subjects preferred Muslim rule rather than returning to the rule of their co-religionists, in case of sectarian differences. The Dutch Orientalist-historian De Goeje is astonished that Muslim armies of the time of Abu Bakr and 'Umar were welcomed in Byzantine territories as saviours, instead of invaders, and this because they conceded autonomy to each community and each sect.

PREACHING OF ISLAM :

The very mission of the Prophet was to preach Islam; political organisation was not the goal, but one of the means of protecting Islam from its enemies. When the State was established, the Prophet continued to find out means to spread Islam all over the world, by persuading, and never by compelling anybody to embrace it.

One of the means was to invite foreign rulers, by writing to them letters of proselytism. Emperors of Byzantium and of Iran, ruler of Abyssinia, Chief of Copts in Egypt, rulers of 'Uman, Samawah (in Iraq), etc. are the examples. Without going into details of this sort of State activities, it is indispensable to bring into relief the fact that Mosque and Citadel (church and state, if one likes) are not separated in Islam, whose motto is "Good in this world and good in the Hereafter". The

head of the State leads the prayer in the mosque even as he leads the armies and administers justice. No aspect prospers at the cost of the other, since the same person is charged with religion as well as political administration.

FINANCES :

The Quran (4/5) calls money the very subsistance of humanity, and naturally of a State also. In the very beginning there could be no coercion, but persuasion of charity. After the very first revelation — which ordered "reading" and told that "pen" was the custodian of the very civilisation of a society, — the very next revelation (surat 93) demanded charity in favour of the needy, orphans etc. Later, part of the charity would become obligatory, and the government would be charged to collect and spend it according to law. The notion of "charity" will never quit the "tax", which is called indifferently *zakat* (purification), *sadaqaat* (proof of veracity and sincerity of one's religion), *haqq* (right, i.e. of the poor, and as such the duty of the well-to-do), among other terms used in the Quran. There are not much details for the income, the rates of different items, the epoch, etc ; there are only allusions to agricultural tax, and commercial tax. The matter seems to have deliberately left to the people to decide according to time and clime. But the expenditure is left to no discretion. The Quran (9/60) has laid down :

> "Nothing but this : verily the *sadaqaat* (taxes from Muslims) are for the fuqara' (poor among the Muslims), *masaakin* (poor among non - Muslims, according to the interpretation of caliph 'Umar), employees of the administration, gaining hearts (in the interest of Islam, secret (service), liberation of yokes (of slaves and prisoners in the hand of the enemy), those who are (unexpectedly) charged with heavy responsibilities, in the path of God (defense organisation, charitable works, etc.), and travellers in transit (hospitality, security, hygiene, etc.), this being a prescription on the part of God, and God is knower, wise."

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Some details are to note : The head of the State is excluded from the beneficiaries; and not only the Prophet, but all the members of his tribe and of the cousin tribe of Banu'l-Muttalib, are for ever excluded. Zakat is to pay not only on harvests etc., but even on savings, hoarding being penalized : money should remain constantly in circulation. Since harvests pay one-tenth, agricultural tax is called sometimes *'ushr* (1/10th) also. Taxes paid by non-Muslims are generally termed *kharaaj*. One-fifth of the booty goes to the government coffers, and the rest distributed among the members of the expedition. This is a non-recurrent income, and has particular beneficiaries.

One cannot go here in details. We wanted just to point out that the State founded and run by the Prophet did not forget taxes; on the contrary, it has raised it to the rank of one of the four pillars of Islam, along with Prayer, Fasting and Pilgrimage. (cf my article in *Journal of Pakistan Historical Society*, Karachi, III/i, 1955 : "Budgeting and Taxation in the Time of the Prophet").

DEFENSE :

One of the essential duties of a State is to organize defense administration. In the beginning there were only volunteers. Since the Prophet had declared it to be a duty, with great divine recompense, there was never a dearth. But in later years, the Prophet thought of a sort of permanent army. So Imam Muhammad ash-Shaibani, quoted and commented (in his *Sharh as-Siyar al-Kabir* by Sarakhsi), able bodied persons received pensions from State coffers, in order obligatorily to respond on demand of volunteers; if they refused, they did not receive these pensions.

The Prophet was much interested in peace-time training, stocking of arms, horses, camels of transport and all else. Women participated in expeditions, generally as nurses, cooks and for administration, but in cases of emergencies they took up arms to fight also; and there are many instances in the life of the Prophet.

EDUCATION :

The very first Quranic revelation ordering to read, much attention was naturally paid to educate Muslims, men and women. In his biography of the Prophet, Ibn Is'haaq has a very important report : "Whenever a portion of the Quran was revealed, the Prophet recited it first in the assembly of men, and then in a (separate) assembly of women". Same curriculum for men and women !

The very first public act after the Immigration in Madinah of the Prophet was the construction of the Mosque, in which housed also Suffah, the first residential university in Islam. Every mosque became a school, and in Madinah alone in the time of the Prophet some 9 other mosques are mentioned. The following report of Tabari must be illustrative : In Yemen there was sent an inspector-general of education, who travelled from district to district, for teaching and organizing educational institutes. For want of space, we shall not enter in the details of this important administration.

GENERAL ADMINISTRATION :

In the capital, the Prophet himself attended to it, with the help of numerous secretaries, for finances, for correspondence, for codifying the Quran which was in the course of revelation, etc. He consulted also often. In the provinces, he nominated governors, and supervised their activities. Some of them have even handed down to posterity the instructions given to them by the Prophet. In urbanization, an interesting order of the Prophet was : streets must be vast enough to let pass at least two loaded camels to cross each other! Great attention was paid to markets, and the Prophet inspected them often and controlled frauds. There were inspectors in the markets, even lady inspectors are mentioned by Ibn Hajar, in the time of the Prophet. Dumping and other abuses were forbidden with sanctions. There was import duty. It is interesting to note that the caliph 'Umar once reduced the rate levied in the time of the Prophet on foreign importation to combat the rising prices.

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Non-Muslim importers paid double the customs duties paid by Muslim traders. The reason of discrimination seems to have been that there are many restrictions on Muslims : interest is forbidden, so also alcohol, swine etc. Further, Muslims pay tax on their savings, non-Muslims are exempt from it.

ADMINISTRATION OF JUSTICE :

This is one of the most important duties of a State. The Prophet nominated Qadis everywhere. The initiative of one of them has saved Muslim law from getting fossilised : When Mu'adh ibn Jabal, Judge-Designate for Yemen, came to take leave of the Prophet, the latter asked him : "how would you judge ?" — "According to the Book of God". — "If you do not find a precision there ?" — "Then according to the conduct of the Messenger of God". — "If you do not find it even there ?" — "Then I shall make an effort of my opinion and shall spare no pains (to deduce good law)". — "Praise be to God who has enabled the messenger of God to a thing that please the messenger of God". — The instructions given by caliph 'Umar to his governor Abu Musa al-Ach'ari, on the administration of justice, are, to a contemporary Christian jurist, "unbelievably modern".

SUCCESSION AND CALIPHATE :

In my humble personal opinion, the Prophet who deliberately founded and himself run a State, abstained as deliberately on the question of succession to power. I think so, because every word and every deed of the Prophet becomes law for Islam, unchangeable till the end of the world. Had he nominated someone from his own family, that would have meant dynastic rule; had he given instructions for any other form, there would be no possibility to Muslims to change it. Supposing he had opted for a unitary form of government, in a dynastic monarchy, and supposing some ruler, in a corner of the world, wanted to embrace Islam : should he be required to abandon his ruling rights and privileges ? Hundreds of complications would come up, in the course of time. With the silence, elasti-

city will be available, and Muslims of different times and climes would be free to select the form of government that suits them without violating the *Sunnah* of the Prophet.

CONCLUSION :

Monarchy, republic, collegial government, or any other known or unknown form of government is *permitted* in Islam, so long as the law of the Quran and the Hadith is applied scrupulously. The question of person dominates always; there was not an iota of difference in the constitutional set up or code of law in the time of Abu Bakr and in that of Yazid, yet what a difference between the two rulers, based on two persons ! But the difficulty is that a person is judged as good or bad only after the experience, often when it is too late. In a Hadith quoted by Bukhari, there is a good recommendation : "We do not give a public function to one who desires that". But in fact, it is another Hadith which will be realized : "When God wills the good of a people, He gives them good rulers and good ministers, and when He wills otherwise, He gives them bad rulers and bad ministers". Lord, enable us to that in which is Thy agreement ! Since God Himself says : "Man has naught except that for which he makes the effort", we must and shall make the effort with all over might, and at the end we shall accept willingly that which He predestines; for good is in that which God chooses.

— *(With acknowledgement to Hamdard Foundation, Karachi, Seminar on State, 1983).*

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The Prophet as a Statesman

His Treatment of Non-Muslim Subjects and its Fruits

Let us begin with the end, and speak of the results first, and then to investigate and find out the causes of this result :

The well-known Russian Orientalist Barthold (English translation of his book Mussulman Culture, p. 22) reports : "During the Crusades, according to a Russian historian of the Church; the clergy and the masses desired the return of the Muhammadan yoke rather than the continuation of the power of the Latins".

A British historian A. L. Maycock *(The Papacy,* p. 48, cf also Vasiliev, *Byzantium et Islam)* recalls : "Two centuries later, when the Turks entered their city (i. e. Constantinople, modern Istanbul), the Easterners declared that they preferred the Sultan's turban to Pope's tiara".

These rather late facts are the continuation of what happened since the very beginning. On the morn of the death of the Prophet, the first official act of the caliph Abu Bakr was to send army mobilised by the Prophet, to Syria on a punitive expedition, since a Muslim ambassador had been murdered there, and emperor Heraclius had rejected the demand to amend the tort. In a lightning attack, Muslims captured the great military base of Caesaria in Palestine. Abu Bakr then sent an embassy to Constantinople for an honourable peace, but in vain. When the war became generalized, let us read what Karalevskij says in his article on Antioche (in *Dictionnaire de l'Histoire et de Geographie Eccelsistiques,* vol. III, col. 592, 594) : "The Jacobites welcomed the Arabs (not as invaders but) as liberators ... Their most important innovation which the Jacobites hailed with joy was to give to each community an autonomous organisation with great number of temporal and judicial privileges vested in the spiritual chiefs".

Speaking of the same period, the Dutch Orientalist De Goeje (in his Memoire sur la Conquete de la Syrie, 2nd ed. p. 104, 106) relates : "In fact the disposition of spirits in Syria was very favourable to the Arabs, and they had merited it, because the leniency with which they treated the vanquished peoples contrasted strongly with the mesquine tyranny of the previous (Byzantine) masters. There were certain Christian groups who would not submit themselves to the Synod of Chalcedon, and by order of Heraclius their noses and ears were cut out, and their houses demolished, (cf Barhebraeus, Chron. Eccels., ed. Lamy, I, 247). The Jews who were accused of having favourised the invasion of Persians, had been cruelly persecuted although Heraclius had promised them amnesty, (cf Eutryenius, II, 242, 246). The Arabs, on the contrary, were guided by the principles that Abu Bakr had inculcated them, tried to win the hearts of the indigenous population, first of all by remaining faithful to the given word...About fifteen years afterwards a Nestorian bishop (cf Assemani. Bibl. Orient., III, 2, p. XCVI) wrote to a friend on their subject as follows : 'These Tayites (i. e. Arabs) whom God has accorded domination in our time, have also become our masters, yet they do not combat at all the Christian religion; on the contrary they protect our faith, respect our priests and holy persons, and make gifts to our churches and convents.'"

BACKGROUND :

All this was the consequence of the policy and the method of government which the Quran had prescribed for the Muslims. In 5/47, the Quran commands "The people of the Gospel should judge cases according to what We have revealed in it". Accordingly, the Holy Prophet gave autonomy to all the communities living in the State founded and governed by him, Jews, Christians and others. In the first year of the Hijrah, when he created in Madinah out of chaos a City-State, he promulgated its constitution, which is the first written-constitution in the

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world history. There in clause 25, we read : "To Jews their *deen* and to Muslims their *deen*."

This was not limited to religion, dogmas and cult, but to all the social life. If the parties were for instance Jews, the court was Jewish, the law was Jewish, and the judge was a Jew, with no recourse to the Muslim court even in appeal. If the parties were mixed, they selected the court with mutual consent, and could come to the Muslim court if they liked, and there Muslim law was applied by the consent of the parties.

Muslim never tried to impose their law to their non-Muslim subjects. How inspiring to learn that the law of personal status in Israel today is the one which was prepared for them during Ottoman time, (of course with the help of Jewish leaders), and the Zealots of Israel have found no fault in it. Muslims have ruled India for over one thousand years, and the Hindus know that they were governed by their law, and never by the Muslim law.

When the Muslims had the luxury of their first civil war, in the time of Ali-Mu'awiyah, the Byzantine emperor Constant is reported to have sent emissaries to Muslim country and secretly instigated the Christians living there to revolt, and coincide this with the attack that the Byzantine emperor had intended to launch. The reply of these Christians, former subjects of the Byzantine empire, was : "We prefer Muslims to you".

Will the modern politicians meditate in their own interest how to treat the so-called minorities in the country ?

— (With acknowledgement to Radiance weekly, Delhi, 11-17 December 1983, p. 5).

Budgeting and Taxation in the Time of the Prophet

THE QUR'AN THE ONLY RELIGIOUS BOOK THAT LAYS DOWN PRECISE INSTRUCTIONS FOR THE EXPENDITURE OF THE STATE-INCOME

Of all the religious books of yore, to my knowledge the Qura'n is the only one which has laid down precise instructions as to the policy of the State regarding the expenditure of its income. In pre-Islamic days the income of the State was considered to be the private property of the head of the State (or the chief of the tribe), but the Prophet Muhammad declared that the proceeds from *zakah* (i.e., income coming from the pockets of the Muslim nationals of the State) is for forbidden *(haram)* for him (the Prophet), for his family and for the members not only of his clan of the *Banu Hashim*, but even of the allied and cousin-clan of the *Banu al-Muttalib*. This proud tradition of Islam, whenever acted upon, eliminated corruption and brought peace and prosperity to all who lived in a Muslim State. The institutions of the time of the Prophet Muhammad have so far received but only meagre attention on the part of scholars, and it will take many generations of servants to fill this lacuna. Fortunately the data is not lacking; only it is dispersed, and has to be picked up from a vast amount of literature and then put together to make the picture complete. An attempt is being made here to give a brief account of the system of taxation and budgeting in the time of the Prophet.

BACKGROUND :

Before doing so, it may be useful to recall the conditions in the pre-Islamic Arabia. Leaving aside the pre-Athens and pre-

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Rome civilizations in Arabia, in the States of Ma'in and Saba'—the latter of the Queen Bilqis' fame—on which our knowledge is scanty and uncertain and which relate to the Yemen, which is rather far removed from the Hijaz, I would refer to Mecca and Medina only in this connection.

MECCA :

The earliest inhabitants of the region of Mecca were of the 'Amaliqah (and it is a branch of this same tribe which was living in Palestine at the time of the Exodus when the Jews, emigrating from Egypt, attempted to expel them and appropriate the land).

According to the history *Mana'ih-al Karam* (cited in *Mir'at al-Haramayn*, I, 69), these pre-historic (Amalecites used to levy a tithe on those merchants who entered Mecca with their goods. When, about two thousand years before Jesus Christ, in the time of the Prophet Ishmael, a confederacy was established in the city-State of Mecca, under two cousins clans of Jurhum and Qatura, our sources (Ibn Hisham, p. 72; Azraqi, p. 47; *Aghani*, XIII, 108) report that the people entering from the northern route paid the tithe to the Jurhumite chief; and those entering from the southern route paid the same to the Qaturite chief. Coming nearer to historical times, when Qusayy (ancestor of the Prophet Muhammad in the fifth degree), wrested power from the tribe of Khuza'ah, and the Qurayshites got hegemony in the city, we come accross another institution for income. Qusayy is the contemporary of the first Byzantine Emperor (fourth century of the Christian era). When he saw that his clan was not sufficiently numerous, and feared that his *coup d'etat* would not be recognized by the general Arabs, who used to throng in Mecca for the pilgrimage instituted by the Prophet Abraham, he suggested to his clansmen that they donated to a fund which he would use for feasting the pilgrims and providing transport for the poor and destitute having no means of their own to return home. This contribution was

called *rafadah*, and became an annual tax (Cf. Ibn Hisham, p. 83; Tabari, p. 1099; Ibn Sa'd, 1/1, p. 41; Yakut (Makkah), etc). There were some other sources of municipal income also. For instance, the offerings for the temple of the Ka'bah, or for the several idols in the city, venerated by the local people as well as by the foreign pilgrims, were preserved (under the name of *Amwal Muhajjarah*), and were certainly used in emergencies, such as the defence of the city against foreign attack, etc. The tips paid to the officer in charge of the holy well of Zamzam (for drinking its water) and to the one in charge of the holy arrows consulted as oracles, went apparently to the private coffers of these officers or "Ministers" of the Mecca oligarchy. (For the offerings to the Ka'bah, see, among others, Ibn 'Abd Rabbih, *Al-'Iqd*, ed. Bulaq. II, pp. 45-46.)

MEDINA :

In pre-Islamic Medina there was anarchy, Arabs and Jews constantly fighting with each other and never evolving a central authority. Yet among the Jews of the *Banu al-Nadir*, at least, we come across central finance. In his biography of the Prophet Muhammad, Shami reports that the Nadirities had a treasury *(Kanz)* to which they all contributed for emergency requirements; that when they migrated to Khaybar, which place was later occupied by the Prophet, he asked them to surrender this treasury, and when the officer in charge was proved to have told a lie in his assertion that the treasury was exhausted, because it was later found concealed in a secret place, he was punished, and the treasury was confiscated.

This is enough to give us an idea of the conditions prevailing in the more advanced centres of human conglomerations in Arabia before Islam.

EARLY ISLAM :

As we all know, when Islam was first preached it was not the religion of the State, but had, on the contrary, to struggle

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against very heavy odds for its very existence. The number of its adherents no doubt increased steadily and gradually, yet for the first thirteen years of its life, this small community had no liberty even to live, much less to organize itself. The teachings of Islam being based from the beginning on highl evels of morality, it was natural that the Prophet exhorted his disciples always to give charity. We have unmistakable proof of it in the Qur'an, where the so-called Meccan chapters also speak of such terms as *zakah* (meaning purification, growth; therefore giving away a part of the growth to purify it), *sadaqah* (charity truthfulness; therefore charity as a sign of a true believer), *haqq* (right; therefore if charity is the right of the poor, it is the duty of the well-to-do), *nafaqah* (expenditure, particularly in the path of God), all signifying practically the same thing — a sort of almsgiving. I have not yet found proof of these contributions of the first Muslims having been collected and disbursed by the central authority. Probably each Muslim spent according to his means and at his own will, whenever there was a worthy cause or a deserving case. Naturally there was no fixed rate either at that time. It is perhaps noteworthy that in one of these early chapters of the Qur'an there is an exhortion to Muslims, saying that the former religious communities, too, Jews and Christians, were enjoined by God to spend their money in charitable causes.

AFTER THE HIJRAH :

The conditions changed fundamentally when the Prophet Muhammad and the persecuted Muslims left Mecca and settled in Medina. A State was established there, a small city-state though; the Muslims had now all the liberty they needed to live as they liked, without fear or persecution. The Qur'an (4:4) calls money the very means of existence, a support *sine qua non* of humanity (Cf. the Qur'an, 4:4, "your property which God has made for you a means of support"). No wonder if the

Qur'an repeats the expression scores of times — "Keep up the prayer and pay the *zakah* tax" — an expression in which the service of prayer and the payment of the surplus-property tax have been conjugated and placed at the same level, and consequently imply the welding of the spiritual and the temporal into one greater and completer whole.

The State established in Medina was not the continuation of something already existing, a mere change of dynasty; it was on the other hand an evolution from tribalism to a superior order of society, a city-State first and a vaster State later. Naturally everything had to be created anew, from top to bottom, because the persons at the helm of affairs, the Prophet Muhammad and his immediate collaborators, had inherited neither any traditions of government nor administrative institutions.

As far as the financial aspect of the administration is concerned, we see a gradual evolution, beginning with persuasion and recommendation and culminating into obligations and duties enforced with all the power that society could command. In the very first sermon which the Prophet Muhammad delivered on his arrival in Medina he said : "In order to save you from hell, you have to spend even a part of a date-fruit" (Ibn Hisham, p. 340). One of his earliest acts was to rehabilitate the displaced persons, the refugees coming from Mecca without and means of livelihood. The arrangement was simple but efficacious : he ascertained the number of refugee families and then convoked a general meeting of the well-to-do Muslim inhabitants of Medina and told them that each head of the family should take one Meccan family. This fraternization was based on the condition that members of the two families would jointly work, jointly earn, and jointly share, even inheriting each other's property, to the exclusion of other blood relations. This was an emergency order, with, of course, the possibility of separation at option.

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Next we come across an organized system of the distribution of charities; the Prophet Muhammad himself received the contributions, and then distributed them among the most needy. As has already been mentioned he and his near relatives were not to benefit from this charity, which was declared religiously forbidden *(haram)* to them, eliminating all possibilies of temptations to abuse public confidence.

The third stage was to make charity a State duty, a real tax. Its exact date may not be determined, yet it cannot be later than 8 A.H. (629 C.E.). For we possess a document, a treaty between the Prophet Muhammad and the newly-converted tribe of Aslam, in which not only the expression "establishing services of prayer and paying *zakah* tax" has been employed, but also an exemption has expressly been accorded from the duty of leaving their homes and migrating to the territory of the Islamic State (Cf. *al-Watha'iq al-siyasiyyah,* No. 165). We know that on the conquest of Mecca in the year 8 A.H. (629 C.E.) the obligation of the emigration of the Arab tribes from their home and hearth to the Islamic territory was abandoned.

It seems that during this period the *zakah* tax was brought to the Prophet Muhammad, who had made no arrangement to send officials to collect it. This came in the fourth and last stage, when tax-collectors were posted all over the country and detailed instructions were given them as to the rate and tariffs of various taxes.

NATURE OF **ZAKAH** AND **SADAQAH** :

From the brief sketch given above, it will be apparent that the Prophet Muhammad did not change the terms *(zakah, haqq* and *sadaqah),* yet there was a marked change in their sense. In Mecca they meant a charity, an alms-giving; in Medina they implied nothing less than a fixed duty, even as prayer and fasting. The term *nafaqah* or *infaq* was retained in the original Meccan sense even in Medina, and it meant voluntary charity,

at the option and according to the means of the individuals; it entailed certainly a divine reward in the after-life if acted upon, yet it did not entail a sanction, a punishment (neither in this world nor in the hereafter), if disregarded. This is important to bear in mind, in order to better grasp the nature of taxation in Islam. For all practical purposes, *zakah, haqq* and *sadaqah* may be taken as synonymous terms, meaning a government tax with the double sanction, spiritual and temporal, even as is the entire life of a Muslim in which both these aspects are welded together to create an equilibrium in man with his complex nature. The most one can say is that these terms applied to contributions coming from the Muslims; income from non-Muslims was not included in *zakah;* it would be *kharaj, ghanimah,* etc.

The *zakah* and the *sadaqah* of the time of the Prophet Muhammad included not only tax on cash, but also the land revenue and the tax on domesticated animals (sheep, goats, camels and cows); it included further the tax on bee-hives, on mines (particularly of gold and silver, and apparently also of iron), on treasure troves, and the like. Without going into all the details and making exhaustive research here, it may be said that the *zakah* and *sadaqah* comprised in fact the entire State income of the time of the Prophet in so far as it was collected from the Muslim subjects. There is no reason to believe that the items taxed and the rates charged were meant to be unchangeable even with the exigencies of times and circumstances. Classical Muslim scholars have clearly recognized that. The Caliph 'Umar is reported to have lowered the existing rate of import duty on consumer goods going to Medina from 10 to only 5 per cent (Abu 'Ubayd, 1660).

TARIFFS OF TAXES

The Qur'an is silent as to the rates to be charged on different taxable articles belonging to the Muslims. This silence may be taken as an indication of the elasticity of the Muslim law on the subject. The Arabia of fourteen hundred years ago did not

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provide much, owing to the barren nature of the soil. There was some agricultural land; it was subjected to a tithe (*'ushr*) at every harvest if the land of an individual produced more than a certain minimum, which was tax-free. There were date groves, vineyards, fields of wheat and barley, and so on, including gardens of fruit trees. Taxes on such items were paid in kind, and not in cash. Then there were domesticated animals; roughly they paid 1 per cent every year, provided they were fed on general pastures, and provided also that the number of animals belonging to an individual surpassed the tax-free minimum. In the case of currency, gold and silver, the rate was 2 $^1/_2$ per cent every year. It is to be noted that this tax was not levied on income, but on the savings: if a certain amount was saved and remained unspent during a whole year, the owner was in duty bound to pay the necessary tax to the central government or its agents. Commerce was also included in the same category: the tax was paid on the stocks. Here debts were taken into consideration, and proportionately the amount was deducted from the savings and the stocks — the rest was taxable. The exploitation of mines was also subjected to the tithe, and already in the time of the Prophet this item of income was well known.

Besides these there were other sources of income, such as import duty on foreigners. International trade was not unknown in Medina at this epoch, and the Nabatean traders used to bring to that place wheat, oil, olives, etc. There was also a sort of scutage tax on those who did not render military service. Another source of income were the agreements which had been made between the Prophet and different localities.

The Qur'an on the Expenditure of the State income

The Qur'an, 9:61, had laid down very precise orders as to the expenditure of the State income, which is not left at the tender mercy of the State. It says :

"The *sadaqat* (i. e., taxes coming from Muslims) are intended for nothing other than the Muslim poor *fuqara'*),

the poor among the resident aliens (*masakin*), for functionaries of the tax administration, for winning the hearts, for liberating the slaves and the prisoners of war, for aiding those heavily indebted, in the path of God, and for the way farer; this is an obligation from God and God is knowing, wise."

A very brief explanation may not be out of place. The *fuqara'* or the Muslim poor do not call for any elaborate discussion here. The very high authority of the Caliph 'Umar is there to support the view that the term *masakin* meant the poor among the non-Muslim inhabitants of the Islamic State. The Semitic philology also confirms it; for instance, in the famous code of Hammurabi we come across the term *mushkino*, which there means a resident alien, very much akin to the *dhimmis* of the later Muslim law. The root "s-k-n" means residing, inhabiting, i.e., in a foreign country. The functionaries, whose salaries are charged on the income, are not only those engaged for the collection, but also accounting, auditing and disbursing. Seeing the items of expenditure, it means practically the entire administration of the time of the Prophet Muhammad. Baladhuri, in his *Ansab*, Vol. I, p. 585, refers to the fact that the Caliph 'Umar once requested the governor of Syria to send some Greek experts to Medina to put right the government accounts.

These were certainly non-Muslims, and of course had to be paid for the service. For "those whose hearts are to be won", the following quotation may be of interest: As to "those whose hearts are to be won", they are of four kinds. First there are those whose hearts are won in order to make them come to the aid of the Muslims. Secondly, there are those whose hearts are won for making them abstain from doing harm to Muslims. Thirdly, there are those whose hearts are won for (their) embracing Islam. Fourthly, there are those whose winning of heart persuades their peoples and their clans (equally) to embrace Islam. So it is permissible that each and every one (belonging to) these kinds should be the recipient of this item of *zakah* be

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he a Muslim or a polytheist (Abu-Ya'laa al-Farra', *al-Ahkam al-sultaniyyah,* p. 116). We may call it in modern terms the secret service. That the government had to provide regularly in its annual budget for the liberation of slaves and subjects of the Islamic State (both Muslims and non-Muslims) taken prisoner by the enemy in a war, is too eloquent to require explanation. Slavery in Islam is for the benefit of the slave, not for his exploitation by the capitalist. A slave originally came from the prisoners of war, who had lost all their belongings, home, family and all else; as slaves in an Islamic State they got a home and means of livelihood. Not only is it the duty of the Muslim State gradually to buy the slaves and free them, but a slave can also at his will get freed if he is willing to earn and pay off his value to his master, who is not entitled to refuse this (on the authority of the Qur'an, 24:33), if the court is satisfied that the slave has been sufficiently civilized and would cause no harm to the State if freed. The item "heavily indebted" is wide enough; mere loans could be given him. The interest-free lending under government supervision would eradicate usury from the country (even as meeting all rightful requirements of the people), just as the other item eradicates slavery from the Islamic society. The "path of God" is also a comprehensible term; from equipping the national army down to grants in aid to students, all could be included therein. The last item, "wayfarer", may be aided not only by free board and lodging, but also by improving touristic conditions : hotels, restaurants, means of transport, security of roads and the like.

If we visualize the condition of Arabia in the time of the Prophet Muhammad, it is not difficult to see that the above-mentioned items practically exhausted all the needs and requirements of the budding State and nascent community of Islam; they went much beyond what was known in the neighbouring "civilized" countries of Byzantium and Iran. In fact the Prophet Muhammad established a welfare State. If we look to its spirit, there is not the least difficulty in concluding that the Islamic law of finance has great elasticity for further expansion to meeting the requirements of any age and any civilization.

Budgets of the time of the Prophet Muhammad

The Islamic State, founded and run by the Prophet Muhammad, was a growing and over-expanding organism. It began in the first year of the *hijrah* with only a few streets of the small city of Medina. But a few years later when he breathed his last, the whole of Arabia and parts of southern Palestine and Iraq were under his jurisdiction. This meant almost a million square miles. This was the achievement of ten years only, that is to say, about 274 square miles were on an average added *daily* to the Islamic State. Naturally, therefore, the income of the State varied from year to year, even from day to day. It is not possible to give exact figures for the whole country for any year; only odd figures can be given :

The income from Bahrayn (not the island of this name but modern al-Ahsa' district, opposite the island of Bahrayn) was 80,000 *dirhams* (Yaqut, *Mu'jam al-Buldan,* Bahrayn).

The region of Khaybar had agreed to divide its agricultural products in a fifty-fifty ratio. This brought 20,000 *wasq*[1] (apparently of dates and wheat) to the Muslim government every year (Ibn Abi Shaybah, cited in the footnote of Abu 'Ubayd's *Amwal,* 1437, 1587, 1590).

The localities in Palestine (of Jarba and Adhruh) had each engaged to pay annually 100 *dinars* (Ibn Sa'd, etc.).

The port of Aylah, on the Gulf of 'Aqabah, paid 300 *dinars every year* (Ibn Sa'd; Maqrizi, *Imta',* I, 468).

The region of Najran, in the Yemen, paid 2,000 garments every year, each garment worth 1 oz. of gold (see, among others, *al-Kharaj* of Abu Yusuf, p. 41). There was weaving industry in this locality, which was inhabited by the Christians.

1. A *wasq* is equivalent to a camel's load or sixty *sa'*, and the *sa'* contained about eight pounds of grain.

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The port of Maqna, on the Gulf of 'Aqabah, paid one-fourth of its date harvest, one-fourth of fishery catches, and one-fourth of the spinning of the womenfolk (Ibn Sa'd, II/I, p. 48, etc.). But the actual income is not mentioned. The same is true of Fadak, and Wadi al-Qura, where the farmers had to deliver half of the harvest, yet I have not come across the actual amounts paid.

There were other vaster and richer regions, and their incomes could be assessed from what we have cited above.

As to the expenditure side, I shall refer to one case, that of the Jewish tribe of the Banu 'Urayd. In a document quoted by Ibn Sa'd Daybuli and others, the Prophet Muhammad had granted them "ten *wasq* wheat, and ten *wasq* barley at every harvest; and fifty *wasq* of date fruits every year".

LATER EPOCHS

This was but an attempt to glean material from a vast literature, and it is not possible to exhaust it so easily. If other scholars also bring into relief the results of their studies in this field, gradually one may have fuller data to reconstruct the whole picture.

We possess greater details regarding later epochs, especially the 'Abbasid Caliphate, for which even the budget notes for the whole empire have been preserved, and have been published, for instance, by Von Kremer in several of his German writings. These refer only to income, yet they are interesting in the sense that we know nothing about contemporary Europe, the empire of Charlemagne, for instance, who is said to have exchanged embassies with Harun ar-Rashid. A comparative study of these later budgets explodes particularly one myth, that of the financial breakdown in the time of the Caliph 'Umar Ibn 'Abd al-'Aziz (d. 620 C. E.) due to his reforms and abolition of many taxes. In fact, the income of the Province of 'Iraq is sufficient testimony to the contrary :

Income of 'Iraq in the time of :

	million *dirhams*
The Caliph 'Umar (d. 644 C.E.)...	120
Ibn Ziyad, Viceroy of Mu'awiyah (d. 680 C.E.)	100
Al-Hajjaj Ibn Yusuf, Viceroy of the Umayyad Caliph 'Abd al-Malik (d. 705 C.E.)	18
'Umar Ibn 'Abd al-'Aziz (d. 717 C.E.)	120
Ibn Hubayrah (d. 720 C.E.).....	100
Yusuf Ibn 'Umar.....	60 to 70

And we know how short was the duration of 'Umar Ibn 'Abd al-'Aziz's reign. If his just rule could have been prolonged to some extent, he could have even surpassed old records.

Von Kremer himself quotes these figures for 'Iraq, but strangely gives at the same time this self-contradictory opinion : "However, there is no doubt that this bigoted Caliph 'Umar II (d. 717 C.E.) undermined the finances by his stupid orders" (*Culturgeschichte*, I, 262). Should one say, in the Persian parlance, "A liar has no memory !"

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Financial Administration in the Muslim State

Unlike Buddhism and Christianity which despise wealth and well-being in the life of this world, the motto of Islam, as assigned by the Quran (2/201) itself, is : "Our Lord, give unto us well-being in this lowly world, well-being also in the Hereafter". It (4/5) recognizes further : "...your goods that God has constituted for you as means of subsistance..." And orders even (28/77) : "...and neglect not thy portion of this world, and do thou good as God has done good to thee..."

Individual talents of earning differ. In His unlimited mercy and solicitude for human beings, God has therefore imposed duties on the prosperous with regard to the poor. After the revelation nominating Muhammad of holy memory as His messenger to the world (96/1-5), the very next commandment that God sent was (93/8-11): "Did He not find thee (O Muhammad) dependent and then He made thee independent (and rich)? Therefore, the orphan oppress not, and the beggar drive not away, and the bounties of thy Lord be thy discourse."

The Prophet began therefore demanding his disciples to be charitable—doing himself more than he demanded of others,—and ended by making this help of the fellow-beings an organized duty, a tax fixed in time and quantity and with sanctions against the recalcitrants.

The Quran employs the terms *zakaat, sadaqaat, infaaq fi sabeelillah, eeta', haqq, naseeb,* among others, in the sense of spending on the poor and needy for the pleasure of God; and later added to it the sanction and coercision. And even when the zakat-tax became obligatory, the Quran continued to insist on further voluntary expenditure on deserving persons, even on animals other than human beings.

In the present study, we want to limit our investigation to the single verse 9/60 which promulgates a sort of law of State-expenditure, mentioning the categories of recipients, and concludes by the declaration that it is an obligatory duty :

> "Nothing but this, that the *sadaqaat* (government revenues coming from Muslims) are for the needy (*fuqaraa'*), and poor (*masaakeen*), and those who work for the (taxes), and those whose hearts are to be won, and to (release) the necks from the yokes and those who are heavily charged, and in the path of God, and for the son of the road (wayfarer); a duty (imposed) by God, and God is knower, wise."

This restrictive enumeration is nevertheless wide enough to include all the needs of a welfare State. Let us explain this verse word by word :

There are eight beneficiaries of the "sadaqaat" :

The word *"sadaqaat"*, plural of *sadaqah,* is synonymous of *zakaat,* and meant at the time of its revelation, (about the year 9 H), all taxes that the Muslims paid annually to the government on different taxable goods, such as agricultural product, commercial earnings, exploitation of mines, herds of domesticated animals (i.e. sheep and goats, ox, camel), and no more just a charity fixed neither in quantity nor time. These 8 kinds of deserving persons are the following :

1, 2) The *fuqaraa'* and *masaakeen.* These terms may be translated as the *needy* and the *poor.* They have caused head ache to commentators and jurists. The Andalusian Abu Haiyan (cf his *Tafsir,* p. 58) records that according to the Imam ash-Shafi'i and some other jurists, these two terms are synonymous, that the tax has only eight categories of recipients, each one getting one-eight and that God in His unlimited solicitude for the poor needy has mentioned them twice, so that they get 2/8ths of the State-revenues. But the great caliph 'Umar ibn al-Khattab

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maintained (cf *Kharaaj* of Abu Yusuf, p. 72; Ibn Abi Shaibah cited by Shaukaani in *Fath'ul-Qadeer*, 2/357; Baladhuri in his *Futooh'ul-Buldaan*, p. 129; *Tafseer* of Tabari X, 110; *Tafseer* of Abu Haiyan, p. 58, etc.) that *fuqaraa'* mean the poor from among the Muslims, and *masaakeen* are the poor from among the non-Muslims of the country. Zaid ibn Thabit, Ibn 'Abbas, 'Ikrimah also opine like-wise. The Semitic philology also supports it; in fact in the celebrated code of Hammurabi, king of Babylonia, the word *moshkeeno* (cognate of the Arabic *miskeen*) means a "resident alien". This word comes from *sakan*, in the sense of staying, residing, and not from sakan in the sense of rest and repose.

3) Those who work for the taxes (*'aamileen 'alaihaa*) : that is to say the civil and military administration of the State, for there is collecting of the taxes, there is accountancy, there is spending the revenues on those who deserve aid. Seeing the list of the beneficiaries, it concerns in practice the whole administration of the State of those days, and *grosso modo* even today. The caliph 'Umar's letter is well-known in which he commanded the governor of Syria to select a *Roomee* (Greek) to send to Madinah for taking charge of the finance department, — at least of part of it, — in the capital :

إبعث إلينا رومي يقيم لنا حساب فرائضنا

(cited by Baladhuri, in his *Ansaab'ul-Ashraaf*). Of course he was a non-Muslim who, perhaps, knew some Arabic.

4) Those whose hearts are to be won *(Muallafati Quloobuhum)*. This is what we call now-a-days "secret funds" in the interest of the State and its inhabitants. This topic merits a bit more detailed investigation :

a) There is a wide-spread belief among later, particularly Hanafite jurists, that this item is now abrogated, and they base themselves on a certain practice of caliph 'Umar. There are divergent reports : Some say that the Prophet used to give monetary help to persons like 'Uyainah ibn Hisn al-Fazaari;

caliph Abu Bakr continued, but 'Umar stopped it, saying that there was no more need of helping people like 'Uyainah. — (But this argument is baseless, since the Prophet had granted aid to 'Uyainah from the booty of the war of Hunain-Hawazin, whereas we are considering here the beneficiaries of zakat, and not of war booties). — The other report says that a certain non-Muslim in the finance department of Madinah embraced Islam, — perhaps the same Greek menttioned above, — and certain well-intentioned persons recommended the caliph to grant some aid to him from the zakat fund, in order to encourage people to embrace Islam. 'Umar is reported to have refused. (This decision may concern an individual case, and not the decision of a general principle. For, the abrogation of a verse of the Quran, which was put to practice by the Prophet and, after him, by caliph Abu Bakr, cannot possibly be undertaken by 'Umar. (A ruler must certainly have the liberty to select persons deserving State aid, and not spending money indiscriminately). It may be brought into relief that in his *"Bidaayat'ul-Mujtahid* (ch. zakaat, jumla 5, fasl 1, mas'alah 2), Ibn Rushd reports that not only the Imam ash-Shafi'i, but even Abu Hanifah had opined that this part of the Quranic verse was not at all abrogated.

b) In his *Tafseer*, (X, 113), Tabari says : "God has imposed taxes *(sadaqah)*, for two purposes: one is to help the poor among the Muslims, and the other is for aiding Islam and fortifying it. As to the aid of Islam and strengthening its causes, it is sure that one will give both to the rich and the poor, since one does not give for the reason of the personal needs of the beneficiary, but to fortify Islam. In this way, one gives aid to those whose hearts are to win, even if they are rich, with the aim of seeking to ameliorate the cause of Islam, fortifying it and aiding it. So they have no right who assert that in our epoch it is not necessary to win hearts of non-Muslims, because the number of Muslims is now great, and Islam is strong enough to defend itself against its enemies". A bit earlier, (X, 110), the same author says that 'Umar ibn al-Khattab and Ibn 'Abbas among others have opined that in the Quranic terms *fuqaraa'-masaakeen*,

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fuqaraa' means the poor among the Muslims, and masaakeen signifies the poor among the non-Muslims. 'Umar accorded a poor Jew of Madinah a pension, saying : he is one of the miskeens of the people of the Scripture. (cf Abu Yusuf, *Kharaaj*, p. 72). Further, when 'Umar went to Syria for inspection he ordered pensions for poor Christians from the Muslim zakat funds, (cf Baladhuri, *Futooh'ul-Buldaan*, p. 129). Even before him, in the time of caliph Abu Bakr, similar was the practice, and the commander Khalid ibn al-Walid helped from Muslim revenues such non-Muslims as had no friends or relatives to maintain them (cf Abu Yusuf, *Kharaaj*, p. 84–85, my *al-Watha'iq as-Siyaasiyah*, N° 291).

c) The celebrated Hanafite jurist al-Kaasaani *(Badaa'i'*, II, 45), the Shafi'ite ash-Shaukani *(Fath'ul-Qadeer*, II. 365), the Hanbalite Abu Ya'la al-Farra' *(al-Ahkaam'us-Sultaaniyah*, p. 116), the mystic Ibn 'Arabi *(Tafseer*, p. 394–395); all say that non-Muslim may lawfully get aid from this category of zakat expenditure. The jurist Abu Ya'la is particularly interesting and convincing : "As to those whose hearts are to win, they are of four kinds : (i) One tries to win the heart of certain (non-Muslims) so that they help Muslims, (ii) of others so that they abstain from doing harm to Muslims, (iii) of yet others in order to attract them to Islam, and (iv) of yet others so that their relatives and clans should be persuaded to embrace Islam; it is permitted to spend the part of those whose hearts are to win on each and every of these kinds of people, be they Muslims or non-Muslims". Abu Ya'la al-Farraa'. *al-Ahkaam'us-Sultaaniyah*, p. 116).

5) The fifth category of the beneficiaries of zakat is for *Riqaab* "liberating the necks from the yoke", whereby one has always understood two kinds of persons : firstly ransoming Muslim citizens prisoners in the hands of the enemy, and secondly manumission of slaves. As to prisoners, there are orders of caliph 'Umar ibn Abd al-'Aziz (cf Ibn Sa'd, V, 260, 272), that no distinction is to be made between Muslim and Dhimmi citizens of the Muslim State. As to helping slaves to get liberated, it is a particularity and glory of Islamic policy; no other system of law, either in the East or the West, has known this solicitude for slaves. Imagine that the Bible orders enslaving enemies, yet there is no permission either in the Old Testament or the New Testament to liberate them. The situation of slaves was bad enough under the Romans; according to Leage (*Roman Private Law*, p. 55-62), at the advent of Christianity, their situation worsened. The governmental aid for liberating slaves is only a part of and in addition to what Islam has provided for this purpose. (See my Urdu book رومی اور اسلامی ادارۂ غلامی

i. e. Slavery in Islamic and Roman Laws).

6) "To those who are heavily charged" *(al-Ghaarimeen)*. According to commentators of the Quran and the jurists, this does not at all refer to the poor, of whom there has already been question under N° 1 and 2; but to well-to-do people who are momentarily in need of help. For instance victims of earthquakes, inundations, a traveller whose money is stolen, one who has involuntarily committed homicide and has no means to acquit himself of the duty of paying heavy blood-money (one hundred camels), and the like. There was a development of this law in the time of caliph 'Umar ibn al-Khattab; he organized interest-free loans (cf Maalik, *al-Muwatta*, 32/1). The caliph 'Umar sometimes borrowed himself money in this way. He lent money even to commercial people, and the State treasury shared profit with them, as a sort of *mudaarabah* or commercial bank.

7) "In the Path of God" *(fee Sabeel Allah)* has been interpreted in a most wide sense : helping volunteers going for war, constructions of works for territorial defense, mosques, schools, carvansarays, free residence for orphans, widows, old or handicapped people, etc.

8) "For the son of the road" *(Ibn'us-sabeel)*, a graphic term to signify the traveller in transit. Not only his hospitality but also many other of his needs, such as police vigilence, security

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of the route, construction of bridges, health measures, etc. are to be assured by the government, in short for tourist traffic. Persons in transit are not exploited by the finance ministry, but treated as guests of the Muslim community.

EXPENSES OF THE HEAD OF THE STATE :

It is noteworthy that in the above-mentioned Quranic list of the beneficiaries of the zakat revenues, there is no mention of the Head of the State. On the contrary, the Prophet himself has said in his well-known sayings that zakat revenues are forbidden for the Prophet and all members of his tribe (Banu Hashim) and also the members of the allied tribe Banu'l-Muttalib (Cf any book of fiqh, ch. zakat).

COLLECTION OF TAXES :

So long as zakat was a recommendatory part of the duties of a Muslim, there was no need of organizing it under an administration. But such was not the case with other State revenues, such as payments on treaty basis, especially from non-Muslims So when in the year 7 H, a punitive expedition occupied Khaibar, in the North of Madinah, the Prophet decided that the local (Jewish) population should continue to stay in the oasis and exploit it until further order, and should share with the government in 50:50 ratio (cf Bukhari 64/40) the harvests of date palms. For this purpose agents were sent every year from Madinah. In the first year it was a certain 'Abdullah ibn Rawahah who went there. He ordered collection of all the harvest in a place, scrupulously divided it into two equal heaps, and told the local farmers : Take whichever of the two heaps you like. This touched them so much that they shouted : By God, it is for this honesty and justice that the heavens and earth stand ? (heavens stand on the earth) ! (cf Ibn Hisham, p. 777).

Another interesting report of the collection of taxes is the following: The Prophet sent Ibn al-Lutbiyah (or: al-Utbiyah) al-Asadi as tax collector for a certain region. When he returned to Madinah, he said : Such and such things belong to the govern-

ment and such and such other things have been offered personally to me as a present. The Prophet mounted forthwith on the pulpit of the mosque, and said : "How is it that agents sent by us say on return : This is for you and this is for me ? Let him sit in the house of his father or mother, and see if gifts come to him or not ! By Him in Whose hand is my soul, all illicit gains will come loaded on the neck of such a person on the day of Resurrection.....Have I caused it to reach to you", repeating it thrice ? (Bukhari, 93/24).

When zakat, which seems to have been only voluntary in the beginning of Islam, became obligatory on well-to-do persons in the years 9 H., the Prophet began sending agents from the capital for collecting taxes. Provincial governors organized local administrations for collecting and spending taxes under the over-riding supervision of the Central government. The Prophet fixed rates for different categories of goods : agricultural products, commerce, import and export, exploitation of mines, herds of domesticated animals living on public pastures (camels, cow, sheep and goats), fixing also taxable minimums, below which the owner was tax-free. What is interesting, he included in taxable items the savings of money also. The idea seems to have been that cash money should always remain in circulation, and not hoarded to remain idle.

The charter given to the tribe of 'Abd'ul-Qais on its Islamisation had far-reaching incidents. It said, among others, "they will have the right that their route of the harvest of grains should not be cut (closed), nor their going (with their herds) in search of the grass on rainfall, nor from harvesting their fruits on their maturity", (i.e. they need not wait for the arrival of the tax collectors). (cf Ibn Sa'd, I/ii, p. 32-33, my *al-Watha'iq*, N° 72). This meant that land tax was on harvest, and not in a determined month. On the one hand the Prophet says that he has trust in the honesty of this people to declare later to the tax collector what was the exact quantity, and on the other a precaution for eventual change of calendar. In fact soon the Prophet abolished

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the Arabian luni-solar calendar and instituted a purely lunar calendar, in which seasons rotate from month to month There-after the tax collector began visiting regions in fixed months of the lunar year, no matter if they coincided with the season of harvest or not. This resulted in dividing Muslim taxes into two categories : some depended on the lunar calendar, such as mineral exploitation, savings, etc., and others depended on solar calendar and seasons. This saved the Muslim treasury from getting empty at the end of the "fiscal year" of the solar and luni-solar calendars, when governments are obliged even to borrow money for short terms for current expenditures before the perception of the new taxes.

FINAL REMARKS :

Everybody knows that the edifice of Islam has the belief in the unicity of God as its roof which is supported by four pillars, viz. service of prayer, fasting, pilgrimage AND payment of zakat taxes. These are the pillars of the faith *(arkaan)*, the most obligatory and essential duties. In the same breath prayer and tax !

To understand the significance of this amalgamation of the spiritual and the material, one must take into consideration the conception of State that the Holy Prophet had in his mind. The prayer and fasting for instance stay at a par with the payment of taxes on the surplus property and with the so-called holy war. The Prophet wanted to amalgamate and coordinate the temporal and the spiritual of the man in one single whole, subjected to the same authority. Citadel and mosque will not be separated, much less become antagonists. The accomplishment of temporal duties will be as much in the path of God as the performance of spiritual duties. Scores of the verses of the Quran pronounce in the same breath *"aqeemu's-salaat wa aatu'z-zakaat"* (establish the service of prayer and pay the zakat). A political philosopher will not fail to discern therein the advantage that the payment of the tax when it becomes a part of the religious belief, a pillar of the faith, the conscience of the Muslim is thereby impressed so

that he should not try to cheat the government but pay tax as scrupulously and punctually as he performs prayer and fasting for instance; even when there is no government pressure or government presence, even when the government forgets to demand payment, one must pay the tax.

A principle of policy : One day Abu Musa al-Ash'ari came to visit the Prophet along with two friends, and told that they desired to be employed for some official function. The Prophet replied : "We do not employ for a function those who desire that function". (Bukhari 37/1/2). Naturally when one asks somebody to do some work, one is willing to help in order to persuade somebody to accept the job, whereas if somebody desires a post, the employer will hold him responsible entirely for doing the job in a correct manner.

According to the Holy Quran (27/39) an employee must have the necessary forces to perfom the job and be also trustworthy *(qawee'un ameen)*. Again (12/55), the candidate must be honest and also expert in the field *(hafeez'un 'aleem)*. So the Holy Prophet once appointed 'Umar ibn al-Khattab as collector of taxes, and when he wanted to pay him the salary, 'Umar refused to accept it and said : Give that to some one who has greater need of it than myself. But the Prophet insisted : "No, take it; if money comes to you from this (Government) property, and you neither look at it with greed nor desire it, then take it; and do not let your soul pursue that when it is not like that", (Bukhari 24/51).

A last word which perhaps is not of the least importance, especially for unthinking minds : the Zakat is a tax, and in the time of the Holy Prophet and the rightly-guided caliphs there was no tax on Muslims other than the zakat !

— (Not published before)

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Constitutional Problems in Early Islam

Constitution is a vast subject. In this study we shall not go beyond the *'am al-jama'a* (year of reunification of the Muslim empire by the reconciliation between al-Hasan and Mu'awiya); and some of the more important problems alone will be dealt with.

BACK GROUND :

Islam began in Mecca, in 609. This region was inhabited chiefly by the tribe Quraish, along with some of the slaves and clients *(maula)* of foreign origin. But not all the Quraishites lived there a settled life. For many of its branches were still nomads, and passed their time in the surrounding regions. (In 1946 these Quraishite Bedouins still lived near the well of Dhu'l-Majaz, east of Mecca, as I had the occasion of meeting them). The constitutional problems were not the same for both these groups of the population :

There are no precise data as to say how the chief of a nomadic tribe was then elected, especially after the death of a former leader. Probably all the members of the tribe assembled, and at the suggestion of the elders, some of the more valiant and perhaps also the richer member was chosen for life to lead them both in war and peace. He was *primus inter pares*, and exercised only a moral force. There is no data to believe that he even exercised judicial powers of punishing or imposing damages, much less power of life and death. Even the excommunication seems to have depended on the council of elders rather than on that of the chief of the tribe.

As to the Quraishites of the Meccan township, they constituted a City-State[1], governed by a Council of ten members, each representing one of the ten principal clans of the tribe living in the town. There was no president, and therefore no monarchy, not even monocracy. The council, as described by Ibn al-Kalbi (cited in the *al-'Iqd* of Ibn 'Abd Rabbih), consisted of the following departments:

1. Guardianship of the well of Zamzam (in Banu Hashim),
2. City banner *('Uqab)* (in Banu Umaiya)
3. Tribal banner *(liwa')*, guardianship of the Ka'ba temple and of the *Nadwa* (parliament house) (in Banu 'Abd ad-Dar)
4. Council of State *(mashura)* (in Banu Asad)
5. Appraiser of damages to pay (in Banu Taim)
6. Cavalry command and leader of the idol procession during the religious feasts (in Banu Makhzum)
7. Foreign relations and defence of the reputation of the tribe (in Banu 'Adi)
8. Finances (in Banu Naufal)
9. Divination by arrows in the temple (in Banu Jumah)
10. Arbitration *(hukuma)* and guardianship of the treasure of the Ka'ba temple (in Banu Sahm).

There seem to have been some co-opted members also. One for supervising the rites during the pilgrimage at 'Arafat, another for the rites at Muzdalifa, one more for the calendar and intercalation. These functions although closely connected with the pilgrimage of Mecca, yet belonged hereditarily to non-Meccan tribes. Historical reasons must have been responsible for that. A sort of engineer-architect *(jadir)* also existed hereditarily in a family of clients living in Mecca, for the maintenance of the building of the Ka'ba.

1. Cf in general my article *City State of Mecca*, in Islamic Culture, Hyderabad-Deccan, XII/3, July 1938, p. 255-276; and my *Le Prophete de l'Islam*, II, 518 ff.

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In the 'parliament' all male citizens of 40 and more years had the right to meet, and they decided all the major issues. It is not known if the council of the "ministers" also held plenary sessions, or if each "minister" decided independently. It is said that all decisions were presented to the minister in charge of the council of state, and could be executed only after his approval; details are wanting. The question of the selection of the representatives of the ten tribes is also not clear. The functions remained hereditarily in the same family, yet how the chief of the family was chosen is obscure. For instance 'Abd al-Muttalib was the guardian of the well of Zamzam, and supplied the water to pilgrims. On his death Abu Talib, one of his younger sons, held the function yet he had sold that right later to his brother al-Abbas. At the death of Abu Talib, it was his brother Abu Lahab who became the head of the family, we do not know how or why; and it was he who had excommunicated the Prophet, obliging him to seek refuge first in Ta'if and then in some other tribe of Mecca. Al-Abbas however continued to be member of the Council of Ten, as the guardian of the well of Zamzam.

The mode of selection or election is not clear, yet one thing is certain : the nomination was for life. Election, and not inheritance, such is the characteristic feature of republics; for the duration of life, and not for a limited period, this is the trait of monarchies. Here both features are combined. Both Arab nomadic tribes and City-States had their particular form of government, which is neither republican nor monarchic. At Mecca, a Council of Ten without a president : this implies that it was an oligarchy, or as we name now-a-days, a collegial government. It may be considered as a democracy, since the sovereignty belonged to man, to members of the tribe or the inhabitants of the city.

We may make a passing remark to Madina, where Islam found its second fatherland. There was no city-state. An Arab tribe, Banu Qaila lived there, and was divided in two rival factions : Aus and Khazraj, two brothers became enemies. There

were several Jewish tribes also, but they lived there as clients of the Ausite or the Khazrajite clans, without any independent existence, although prosperous and exerting economic pressure in the local affairs. There were internecine wars between Ausites and Khazrajites, the last of which was fought at Bu'ath, just before the migration of the Prophet to Madina, in which the Ausites were decimated, and the remainder did not count more than a third of the strength of the Khazrajites.

We need not be detained long to speak of other regions, some of which had become foreign colonies : Byzantines in the North of Arabia, Iranians in the East and in the South were the overlords. These latters had even preserved Arab kings in their protectorates : in Hira the Lakhmit dynasty, and in 'Uman first al-Julanda ibn al-Mustakbir, and at his death a joint rule under his two sons, Jaifer and 'Abd. The case of Dumat al-Jandal is intriguing : there was a king but who, according to Ibn al-Kalbi[2], changed from time to time. In fact every year, during the annual fair, the two rival candidates posed riddles to each other, and whoever won the competition became king for a year, sometimes Ukaidir and at others Qunafa al-Kalbi. Taif, near Mecca, was a big town, where two different tribes lived apparently in peace and harmony, but there were no statal organisations as far as we know.

ADVENT OF ISLAM :

Muhammad, the future Prophet of Islam, was a Meccan of the clan of Banu Hashim, but had no share in the government, neither before Islam nor since its commencement, one of his uncles being the representative of the family in the City Council. When he began preaching Islam, which was against the prevalent local paganism and idolatry, there was opposition which increased as time passed. But there were also converts who increased daily. Most of these were young men, teen-agers or in their twenties. The resentment of the elders became the more

2. Ibn Habib, *al-Muhabbar*, p. 263-4.

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vehement since their own children deserted them and rallied to iconoclasm. In spite of persecution, Muhammad did not want to leave his town. And in fact where to go? Like passport visas of today, the consent of a foreign tribe was necessary before going there. The result was that a State in a State came gradually into existence at Mecca: Muslims referred their affairs exclusively to the Prophet, who was their legislator, judge, and leader in general. They also boycotted local cult of paganisn. (The Ka'ba as the House of God was, however, common to both : Muslims and non-Muslims prayed there, each according to his manner, and this lasted until the pagans denied to the Muslims the access to the Ka'ba. Then the Muslims celebrated their service of prayer in their houses[3] yet in the direction of the Ka'ba).

A Prophet is nominated by God, but that does not suffice; he is to be recognized by his fellow men individually. In fact whenever someone embraced Islam he made a personal pact *(bai'a)* with the Prophet, pronouncing the creed and promising to obey him in weal and woe, according to his possibilities. Sometimes a representative brought the conversion of a whole group. Before the migration of the Prophet to Madina, we see people coming from distant places to embrace Islam and return to their respective countries: Abu Dharr[4], from Badr, Tufail ad-Dausi[5] from Hadramaut, others from other regions, such as Tamim ad-Dari[6] (the sailor). By the *bai'a* a sort of social contract was concluded between the ruler and the ruled. They obeyed the Prophet in all that he laid down, be that in matters of dogma, morality or social behaviour; and since the *zakat* is mentioned several times in the Meccan *suras* of the Quran, it is

3. For the mosque in the house of Abu Bakr, cf Ibn Hisham. p. 246, al-Baladhuri, *Ansab*, I, 206; also the house of al-Arqam where the Prophet lived for considerable time and where 'Umar too had embraced Islam, cf Baladhuri, index, s.v. Dar al-Arqam.

4. Muslim, *Sahih*, 44, No. 132-3.

5. Ibn Hisham, p. 252-4.

6. Muslim *Sahih*, 52, No. 119-122.

possible that these Muslims even brought their zakat, in the form of a voluntary contribution, to the Prophet to be disbursed by him in charity and for the welfare of the community. The "state in the state" presided over by the Prophet at Mecca had all the traits of a State except that it had no separate territory. Independence there was, and also organic links between the ruler and the ruled; and there was also a separate law in the making.

After 13 years of effort the Prophet had to emigrate and settle in Madina where at least twelve tribes had rallied to his call, since he had to nominate 12 *naqibs*, each for a tribe; and one of them as the naqib an-nuqaba[7] (chief of chiefs). Arriving at Madina, he found there not only anarchy but even absence of all organized civic life. He convened a meeting of all the tribes of the region, both Muslim and non-Muslim, (including idolatrous Arabs, Jews and Christians), and proposed to them the establishment of a city-state for the sake principally of order inside and defence against outside invasion. Those who accepted drew a document containing the rights and duties of the ruler and the ruled. It has come down to us in toto, and constitutes the earliest written-constitution of a State in the world, promulgated by the sovereign, and talked of all the requirements of the political life: independence vis-a-vis the rest of the world, religious tolerance for the different groups of the population organisation of justice, social insurance, defence, foreign relations legislation etc. Non-Muslim subjects enjoyed autonomy not only for personal status but also for justice, law and naturalisation etc. (I have contributed a special monography on the subject)[8].

At first it was a tiny city-state covering only part of the town of Madina, but it expanded rapidly, by conversion chiefly, by conquests also in certain cases. So the constitutional set up

7. Baladhuri, *Ansab*, 1, 254.

8. *The First Written-Constitution in the World*, ed. Lahore, 1968. Cf also my *Le Prophete de l'Islam*, I, 123-137.

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for the administration was far from being uniform. At first it was direct rule in Madina. When the territory expanded, governors were to be nominated. In many cases, for nomadic tribes, either old chiefs, were retained on their conversion, or else new ones were nominated, thus ruling indirectly; and these delegates had the obligation to lead the prayer, collect the zakat-tax (with some liberty to spending it on the spot) and applying Muslim law in general, including voluntary military service. When the Negus of Abyssinia died, the Prophet celebrated a funeral service *in absentia* at Madina;[9] was that not a sure indication that to the Prophet, the late Negus was a Muslim ? But there was rather a personal attachment, and there is no proof of Abyssinia's being administratively linked in some way or other with Madina. The case of 'Uman is clearer. It was formerly a Persian protectorate, and was under a joint-rule of two brothers. Jaifar and 'Abd. On the invitation of the Prophet, they embraced Islam. The Prophet sent an official from Madina in the person of 'Amr ibn al-'As, as a Resident, let us say, and he attended to the affairs of the Muslims of the region, those of non-Muslims being left to the rulers[10]. In this case there was not only an indirect rule, but even partition of powers. More significant is the fact that the major port, Daba, site of an international annual fair "which was attended by traders from China, from Hind, from Sind, by people from the East and the West",[11] and belonged to the kingdom of Uman, saw a new governor sent from Madina[12]. In Bahrain (the modern Alhasa province) there was no kingdom, but the former Arab governor of the Persian empire, al-Mundhir ibn Sawa embraced Islam, and was retained as governor by the Prophet, cutting relations with Iran[13]. As to Najran (in Yaman), it was a Christianized region. Their delegation came to Madina, and found it prudent neither to incur *mubahala* (Muslims and

9. Bukhari, *Sahih*, 63/36; Suhaili, *ar-Raud al-Unuf*, I, 216.
10. Ibn Sa'd, *Tabaqat*, 1/ii, p. 18.
11. Ibn Habib, *al-Muhabbar*, p. 265-66.
12. Baladhuri, *Ansab*, I, 529.
13. cf my *Le Prophete de l'Islam*, I, 251 ff.

Christians invoking mutually Divine malediction on the liar), nor war. So they concluded a treaty of peaceful accession to the Islamic territory[14]: they paid an annual tribute, but retained autonomy even to nominate their own religious and secular chiefs; and it was at their demand that the Prophet sent a delegate from Madina, as a judge as it seems. Aila (Eilat). Jarba and Adhruh, in Palestine, were also Christian regions, and consented to pay tribute and obtain protection of the Islamic State. Maqna on the Gulf of 'Aqaba did the same[15]. It is not intended to exhaust the list of the multifarious kinds of regions in the Muslim State of the time of the Prophet, yet what has preceded would suffice to illustrate the complexity of the constitutional situation even at this early epoch when we see among the delegations coming to Madina to declare their conversion to Islam one even from Ghassan[16] (Damascus); the Byzantine governor of Ma'an (in Jordania) embraced Islam, but was arrested and crucified by order of Heraclius[17].

Relations with Mecca

Let us not pass in silence another fact of considerable technical importance. We have mentioned above that there was a Council of Ten which ruled Mecca. When obliged to leave his native town, the Prophet established a State in Madina; whenever he set out to meet a Meccan army, he confided the Muslim banner to a convert of the same tribe as held at Mecca the function of standard-bearer, viz. Banu 'Abd ad-Dar, both in Badr and Uhud[18]. Again when he wanted to send an ambassador to negotiate with the pagan Meccans, he asked 'Umar—formerly entrusted with the function of ambassador-delegate in the Meccan Council—and it was only when 'Umar asked to be excused for personal reasons and suggested the name of 'Uthman that this latter was sent[19]. Does that not mean that the

14. *idem*, II, 412 ff; my *al-Watha'iq as-Siyasiya*, No. 94.
15. cf *Le Prophete de l'Islam*, I, 399-408; *al-Watha'iq*, No. 32-34.
16. cf *al-Watha'iq as-Siyasiya*, No. 38-40; Ibn Sa'd, ch. *wufud*.
17. Ibn Hisham, p. 958.
18. Ibn Hisham, p. 432, 560.
19. Ibn Hisham, p. 745.

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Prophet considered himself as the *de jure* government of Mecca in exile, the *de facto* rule remaining with the pagans on the spot? On the conquest of Mecca, he confirmed the guardianship of the Zamzam well to al-Abbas, and the key of the Ka'ba to the Banu 'Abd ad-Dar; he searched even those who held functions at 'Arafat and Muzdalifa[20], to confirm them in their hereditary rights, but none was found. Some functions of the Meccan Council, incompatible with Islam, were also abolished, such as the divination by arrows etc.

Technical Aspects of Muslim State

The government of the Prophet, was it an autocracy, a democracy or something else ?

It was certainly not an autocracy, because the Prophet not only consulted his companions in all sorts of questions, even in matters of religion, such as the method of information of the time of prayer *(adhan)*[21], but also he repeated always that he was as much subject to what he taught as any other Muslim, and even much more as far as the supererogatory acts of piety, such as fasting and prayers were concerned. In the Quran (69/43-47) God says that even if the Prophet failed in the faithful transmission of God's commandments and attributed to Him something false, He would at once punish him and destroy him. And in another passage (8/68), when the Prophet had decided something in consultation with his companions—since there was no precision in the Quran—and his decision did not please God, at once a revelation came to correct him. (There are several cases of this kind in the Quran). Further, the Prophet did never feel himself above the law; and there are at least a dozen cases when he heard a plaint against his own self and gave satisfaction to the plaintiff, be he a Muslim or a non-Muslim[22]. There are even elements of referring his own case

20. Ibn Habib, *Mukhtasar al-Jamhara* (MS), fol. 41/b. cf my *Le Prophete*, II, 535.

21. Ibn Hisham, p. 347.

22. cf. my *Muslim Conduct of State*, 4th ed. para 257-9.

to a third person to arbitrate[23]. Even in the matter of polygamy he was not behaving contrary to the law laid down in the Quran for general Muslims; (he in fact contented with four wives, and the rest, married to him before the promulgation of the restrictive law, became honorary epouses, without conjugal relations).

It was also not a *democracy*, because the final word, the sovereignty did not belong to the people, to Man, but to God. One had to apply in the first instance the Quran, which no human being can change or modify. In the silence of the Quran, the Prophet made deductions with common sense and logical reasoning, be that in consultation with his companions or else. He also let the old customs continue unless he found in them something inadmissible, which he rectified as the occasion arose. Human element there was yet in a secondary place : God did order in the Quran, but the understanding of the Quran was human; unabrogated customs were also of human origin; in the silence of the revealed law, questions were decided by the effort of reasoning. Human element was completely absent when the divine order was clear. The twofold principle is simple and logical: Firstly: No inferior authority can abrogate the law promulgated by a superior authority. If a common Muslim, a judge for instance, deduced some rule, either he himself or the Prophet could abrogate it and replace it by something else. But if the deduction was Prophet's, no common Muslim could modify it; the Prophet himself could do that, or God through a revelation. If the order was God's, not even the Prophet had the right to change it; God alone can do that if He willed. Since there is no possibility in Islam of a man's receiving divine revelations after Muhammad, who was the last of the prophets, no human agency can change the Quran without going outside the pole of the Islamic community. *Secondly :* The old order will be maintained, as ever valid, unless initiative is taken by the Legislator to modify it.

Was that a *theocracy ?* The term is tempting etymologically. But the significance is not the same in its historical context. In the old Jewish theocracy, the heads of the community, the so-

23. Ibid., para 259/j.

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called "Judges" received divine revelations; in Islam that is true of the time of the Prophet, but it cannot apply to the caliphate. Both civil and religious affairs did fall under the purview of the government in the time of the Prophet, but, as we have just seen, there was also a large place for human elements provided there was silence in the divinely revealed Text of the Quran.

Human affairs may be divided in three categories : civil, religious, and spiritual. In the West, spirituality is amalgamated into the practice of religion; in Islam the practice of the religion forms part and parcel of the political (civil) affairs and depends on the political caliph, and for spiritual affairs there are other authorities, the spiritual caliphs or heads of *tariqas*. In his *Kitab al-Umm*[24], the imam ash-Shafi'i for instance describes the constitutional law, of who can be a caliph, under the discussion of the imam of the prayer : the imam is as much the leader in the mosque as in the citadel and government house *(dar al-imara)*. But he is subject to the law, to the Quran in both the fields In our humble opinion, it is better to reject all foreign terms to qualify Islamic constitutional conceptions, be that of the time of the Prophet or the caliphs, and consider them as something *sui generis*.

The result of the separation between the political and the spiritual is that there are two parallel and simultaneous States in the Muslim State, yet without least conflict, rather complementary, each helping the other : The outer State, with its politico-religious caliph, takes care not only of the outer defence of the territory and inner order, but also of the establishing of the more significant elements of the Islamic religion (since it is the caliph who leads the prayer in the mosque, decides the day that the fasting month of Ramadan should begin or end, presides in person or through a deputy over the pilgrimage at Mecca, and applies all the civil, criminal and international laws of the Quran). The caliph is the successor of the Prophet in

24. I, 136-40, 143-4 (cf *al-imama al-'uzma)*.

part of this latter's prerogatives. It was Abu Bakr, who as a matter of fact held that post at the death of the Prophet. Multiplicity of heads was not admitted there[25], only one caliph for the entire Muslim world. This on the one hand. Simultaneously and on the other hand there was an inner caliphate, for the spiritual guidance of Muslims, and there was no limit to the number of such "caliphs" : Abu Bakr, 'Ali and many other companions held that rank simultaneously. The Qadiriya, the Suhrawardiya etc. recognize 'Ali as the immediate caliph of the Prophet; the Naqshbandiya learning the same teaching from Abu Bakr. One can even have more than one affiliations in this realm : the Mujaddidiya for instance recognize both 'Ali and Abu Bakr as their final guide linking them simultaneously with the Prophet. These inner "caliphs" tried to polish morals and inculcate true Islamic solidarity and human fraternity with tolerance and charity as their motto. They were useful to curb ambitions of adventurers and to nip in the bud the rebellions and civil wars. Even the political caliphs did not mind to pay homage to these spiritual caliphs, and treated them even as superior to themselves.

In the discussion of the constitutional law, it is not the form but the spirit that counts. Justice and rule of law on the part of the caliphs were more important than the question whether he was democratic or autocratic, whether he had the right to veto the decision of the majority of his council or not, whether the counsellors were selected or elected, but that these latter were really representatives of groups of interests and were honest and wise, searching not personal or particular interests but the common weal.

It is not possible, in the present state of our knowledge, to say categorically whether the Prophet or his immediate caliphs exercised the right to veto. The question of the Prophet is a bit particular, since if he had said : "such is the commandment

25. Bukhari, *Sahih*, 62/5. No. 9; Tabari, *Ta'rikh*, I, 1823.; Ibn Sa'd, III/i, p. 151; Diyarbakri, *Tarikh al-Khamis*, II, 168-9.

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of God revealed to me", no further discussion was possible, and every Muslim willingly acquiesced in. But in matters where there was no revelation, and the Prophet had to rely on his personal, human opinion, there are instances where he conceded to the majority opinion against his own personal preference, for instance, he left Madina to meet the enemy at Uhud, in spite of his preference to defend from inside the town and incur a seize. Even a saying is attributed to him : "If Abu Bakr and 'Umar are unanimous. I won't go against them".[26] The principle is well described in the Quran (47/21) : "An obedience and a sincere word (advice); thereafter when the resolution is taken for a matter, it would be better for them to be truthful with regard to God" (abide by the promise of obedience). Sincere and independent opinion at the time of discussion, yet solidarity and full collaboration even against one's opinion when the decision is made ! There was no egoism, and the interest of the community was of prime importance.

Votes are rare in the time of the Prophet. The only instance known seems to be the one[27] when some people agreed to liberate gratis the prisoners of the tribe of Hawazin who were already reduced to slavery and distributed as booty, and others would not. By means of decurions, all the army was consulted, and it was found out that all were for and only two were against. The Prophet decided that all prisoners should be liberated, and the two recalcitrant soldiers should be compensated from State treasury for the liberation of the prisoners in their possession.

As we shall see in more detail later, the system continued *mutatis mutandis* in the time of the Orthodox caliphs. Autocracy there never was, legality was the principle.

Succession to the Prophet

The Prophet had left no son to survive him; and of his daughters only Fatima was living when the Prophet breathed

26. Ibn Kathir, *Tafsir*, I, 420 (on Quran 3/159, citing Ibn Hanbal).

27. al-Kattani, *at-Taratib al-Idariya*, I, 235, citing Bukhari (cf kitab *maghazi*, bab 56, No. 5 and Kitab *Ahkam*, bab 26)

his last. So the question of succession was agitating many minds.

Had the Prophet left a son, probably the community would have accepted him as the successor, without difficulty, and dynastic rule would have become obligatory among Muslims. As to a daughter, the Quran does not preclude the possibility of a woman ruler, and many a pious Muslim jurist has referred to the story of the queen of Saba, who according to the Quran[28], had "embraced Islam in the company of Salomon" (whom Islam considers as a prophet). Arab tradition saw no objection against it either; Umm Qirfa and Umm Ziml of Ghatafan, Sajahi of Tamim tribes are well-known examples of female chiefs. The Prophet had even nominated a woman, Umm Waraqa, a hafiz of the Quran, as the imam[29] of a mosque in Madina where she led the prayer even with men as followers. Nevertheless the Prophet seemed not to like women entrusted with supreme power. For not long before his death, when he had learnt that the Iranians had selected a woman to be their ruler, he had exclaimed : "a people that has entrusted its supreme power to a woman shall not prosper". Further the Quran (13/18) had said that women are not very good for war purposes. Even in Fatima had had political ambitions, there was little chance of her succeeding to the power of her father, the Prophet, more so since her husband, 'Ali himself was a candidate for the post.

The nearest male relative of the Prophet was an uncle, al-Abbas, and several cousins (sons of uncles), including 'Ali. According to the Muslim law of inheritance, uncle inherits to the exclusion of cousins. When the Prophet was on his death bed, al-'Abbas[30] went to 'Ali and said : The Prophet has made no testament for his succession; let us go and ask him : if the

28. Quran 27/44.

29. Ibn Hanbal, *Musnad*, VI, 405; Abu Dawud, kitab 2, bab 62; Ibn 'Abd al-Barr, *al-Isti'ab*, ch. kuna an-nisa, No. 107.

30. Bukhari, *Sahih*, 64/83, No. 15 and 79/29 Ibn Hisham, p. 1011; Tabari, *Ta'rikh*, I, 1823; Baladhuri, *Ansab*, I, para 1180.

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political power is to remain with us, we shall know that; if not, we shall be the witnesses of his testament. But 'Ali declined and significantly said : "I won't go, for if he denies that to us now, nobody would ever give it to us later". (This shows clearly that nobody believed in the automatic inheritance of the rulership). Al-'Abbas had personally no great ambitions, but he was politically-minded. A few days after the above conversation, when the Prophet died, he went again[31] immediately to his eminent cousin, 'Ali, and said : Proclaim thy succession and I pay thee homage the first, others will follow. 'Ali refused again, and wanted that instead of a *fait accompli* imposed on others, there should be a public deliberation; and thought that nobody would raise objection against him (more so since his uncle also was renouncing in his favour).

The Madinan Ansar were also preoccupied with the question. But their's was a dead-born ambition, for they were divided among the Ausites and Khazrajites, no one group tolerating the caliphate to go to the other. The Khazraj, the more numerous clan did effectively meet in the club *(saqifa)* of the Banu Sa'ida to deliberate how to get their candidate accepted by the others. (They were the original inhabitants of Madina, may be the majority of the population of the capital. The Prophet had taken refuge in their country, and was even related to them, since the mother of his grand-father 'Abd al-Muttalib, was a Khazrajite, even as the host in whose house he had passed his early weeks in Madina. And the Prophet had consented to become the naqib of this tribe, when the one nominated at the time of the pact of 'Aqaba had died.)[32] But an Ausite brought the news of the separate deliberations to Abu Bakr[33], who took it so seriously that without demanding other

31. Baladhuri, *Ansab*, I para 1185.

32. Ibn Hisham, p. 346; Tabari, *Ta'rikh*, I, 1261; Baladhuri, *Ansab*, I, 254, para 584 says that this person, Asad ibn Zurara was not only the *naqib* of the clan of Banu'n-Najjar, but also the naqib an nuqaba. It was the same clan from which the mother of 'Abd al-Muttalib had hailed.

33. Ibn Hisham, p. 1016.

eminent persons to come along with him he went, accompanied by 'Umar and Abu 'Ubaida who were with him when the news came to him. His intention seems to have been to use his influence to persuade the Khazrajites to postpone the discussion till after the burial of the Prophet, and even then along with all the Muslims and not factionally. Abu Bakr introduced himself in the club without being invited there. He was received politely, but was nevertheless told why the Ansar thought that the succession to the power of the Prophet should go to the Ansar. Abu Bakr replied that if the caliph was not a Meccan, he would not command respect in Arabia. The Ansar proposed a compromise: a joint-rule, "one emir from you, one from us". (According to a report, which seems to be a further compromise: "let us institute a tradition that the caliph should alternatively be from the Meccans and the Madinans)".[34] But it was rejected even by the Ansar, or by the more extremists from among them. An eminent Ansarite then rose up and addressed to the members of his tribe: Don't try to snatch power from the Meccans, for you all know that the Prophet had himself said that "the *imams* are from among the Quraishites". (This according to al-Waqidi; according to Ibn Ishaq, it was Abu Bakr who had reminded that.) There was a suspense; then Abu Bakr said: I propose to you two names, select anyone of them, viz. 'Umar and Abu 'Ubaida. 'Umar was taken by surprise and he jumped to say: No, it is not me but solely to Abu Bakr that you should pay homage; He wanted to force Abu Bakr's hand, when an Ansarite roared : No, no, wait, let it be me the first to pay homage to Abu Bakr! (When a fine example of selfless and true Islam in these Ansarites! Professional enemies of common sense would say that the Ansar had no political maturity; they out to have indulged in a civil war and fratricide).

34. Bukhari *Sahih*, 62/5, No. 9; Ibn Hisham, p. 1016: "one emir from among us and one from among you". According to Ibn Sa'd, *Tabaqat*, III/i, p. 151, they proposed a joint rule *(qarin)*. According to Diyarbakri, II, 168-9, the succession was to alternate, one after the death of the other.

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That Abu Bakr had come only to ask for postponement and not for a decision, is confirmed by the fact that immediately after the burial of the Prophet he convoked a general assembly of the Muslims of Madina and explained in what conditions and how against his own will he had been elected, and added : You are not at all obliged to confirm, and the question is open : you may now elect anyone you like anew in all calm. But nobody would change the previous decision, and everybody renewed his pact of allegiance. On learning the news and the decision of the metropolis, the provinces also confirmed the election and sent in their homage through the local governors.

'Ali was absent from the general assembly of Madinans (and later he said that he was busy collecting the Quran). So Abu Bakr himself went to him, and said that all had decided a thing, so he too should do the same. 'Ali replied : I am not at all against you; the only thing I resent is that things have been decided without asking me to be present at the consultation. Abu Bakr explained in what circumstances and for what purpose he has hastened to the club of the Ansar, and that if he had known that 'Ali was desirous of the caliphate, he would not have accepted to be chosen as such. Soon they reconciled; and I need not study here the conflicting reports, one saying that 'Ali paid homage forthwith, the other affirming that it happened sometime later. It is however to note that a few individuals retarded the offering of their homage, and at least one individual refused to do that and never paid it during all his life. Abu Bakr left them to their choice and never resented, much less harassed or punished them. These "recalcitrants" also did nothing to disturb order, on the contrary they collaborated with the government and participated in the expeditions it despatched.

We have remarked above that the election of Abu Bakr was for life. He was no prophet, and so there was no question of his receiving divine revelations. But he was not even the sole successor of the Prophet for all the rest of the functions of the Prophet : politico-religious affairs were amalgamated and went

to the "outer" caliph, and Abu Bakr was the first successor; spiritual affairs did not require monopoly and centralization, and there were very many companions of the Prophet, spiritually-minded and having learnt many things from the Prophet and continued in all independence to transmit and teach to whom desirous of learning the same. These "inner" caliphs were all simultaneous and immediate successors of the Prophet. There was not even the discrimination of class : Abu Bakr was the outer caliph for all Muslims and was at the same time the inner caliph for those Muslims who chose him as such. 'Ali was not the first outer caliph, but was one of the inner caliphs, living in the same town as Abu Bakr. If one considers that things of this world are ephemeral and not worth disputing on, and that the importance attaches to matters of the next world, falling in the spiritual dominion, there is the possibility to unite all Muslims. Sunnis and Shi'as, all agree that 'Ali was an immediate successor of the Prophet in the spiritual kingdom (and most of the *silsilas* that exist today are affiliated to him).

This aspect is further confirmed by some sayings of the Prophet He had said "Those who demand a public function, we won't give that to him!"[35] He wanted to discourage political ambitions. His family had to give example. 'Ali had momentarily cherished such a desire; he must now be happy that he did not push it through, and thus the Prophet's real desire was fulfilled by 'Ali's not being elected to the post of the outer caliphate on his own demand. Another important point is that the election of 'Ali to the caliphate immediately on the death of the Prophet would surely have instituted a dynastic rule, and later Muslims could not have easily gone to other forms of government such as the republic. The universality of Islam's call, and elasticity of its law would have suffered by the obligatory monarchy, and limitation to a single family till the end of the world, as the only possible form of its government.

35. Bukhari, 37/1, No. 2; Abu Dawud, 23/2.

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'Umar's Nomination

On his death bed, Abu Bakr asked his secretary, 'Uthman, to take down his testamentary will, saying that "he designated for the post of caliph..." At that moment Abu Bakr swooned, and the selfless 'Uthman completed the phrase by adding the name of 'Umar[36]. Soon Abu Bakr recovered; and when he learned what 'Uthman had done, he praised him and said: You could as well have written your name, since you too merit it. After completing the dictation, the document was sealed, and the "police commissioner" was asked to take it out and declare in public: Here is the will of Abu Bakr who asks you to pay homage to the person named in the document. The prestige of and confidence in Abu Bakr were such that without knowing the name, everybody willingly paid homage to the heir-designate. After the death of Abu Bakr, the envelop was opened, and the *bai'a* for 'Umar was renewed. Naturally this constituted no election. We know that even in case of dynasties, *bai'a* has always existed. So the *bai'a* alone cannot make 'Umar as an *elected* president of a republic.

'Uthman's Selection

The form of government instituted by Abu Bakr did not change under 'Umar. 'Umar could not decide until his death as to his successor. Grievously wounded by an assasin, he on his death bed recalled: The Prophet had one day named ten persons as those who would surely go to Paradise. Of the survivals, six were present in Madina. 'Umar said: Let these six deliberate and select one of themselves as the caliph. He added a seventh number to vote in case of tie, but who was expressly excluded from the possibility of being selected as caliph, and it concerned his own son 'Abdallah ibn 'Umar. (The sagacity and piety of 'Umar cannot be too much praised).

In the meeting, four members said that they were not candidates. So only 'Uthman or 'Ali had to be selected. Then

36. Ibn Sa'd, III/i, p. 142; Ibn Hanbal, I, 27 (No. 259).

everybody agreed that 'Abd ar-Rahman ibn 'Auf should decide. For several days he consulted the public opinion and talked not only to the permanent inhabitants of the town, but also to traders and tourists who had recently come to Madina, and even school children, even women[37], and found that the immense majority—let us say 99.9%—were for 'Uthman, only a few individuals were for 'Ali. He had recourse to another final test before pronouncing his decision. He asked publicly 'Uthman: If I nominate you, are you prepared to follow the Quran, the Sunna and the precedents of Abu Bakr and 'Umar? He said: Yes On the same question 'Ali replied: The Quran and the Sunna yes, the precedents of Abu Bakr and 'Umar not necessarily: I can make my own *ijtihad* (effort of reasoning). From above the *minbar* of the mosque 'Abd ar-Rahman ibn 'Auf then said: O God Thou knowest full well that I am seeking nothing but well-being of Thy community. Thereafter he declared that he had chosen 'Uthman to be the caliph. Everybody consented and paid unanimous homage to 'Uthman. (This is also no election, but a nomination by the precedent ruler, not direct but indirect, by means of intermediaries). As in previous cases, the provinces ratified the decision of the capital.

'Ali and Mu'awiya

According to the great historian Tabari[38], there was a non-Muslim plot long prepared, well laid and well executed to discredit 'Uthman and murder him. A handful of simpletons from among the Muslims were also lured in unwittingly. Without entering here into the details, let us describe the final stage. Rightly or wrongly there was some complaint against the governor of Egypt. 'Uthman readily agreed to change him and nominated the person which the complainants had suggested, a son of Abu Bakr. Receiving the letter of nomination he set out at once for Egypt. The caliph sent also a letter urgently to the governor in Egypt, informing him that he had been replaced by such and such, on the arrival of whom he should given him charge.

37. Ibn Kathir, *al-Bidaya wa an-Nihaya*, VII, 146.
38. anno 33 H., re Ibn Saba, alias Ibn as-Sauda'.

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Naturally this official postman travelled faster to reach Egypt before the arrival of the governor-designate, and crossed him. This latter got suspicious, and wanted to see the message, which he opened and read it. "Such and such has been appointed governor of Egypt, when he comes to thee فاقبله (as the Arabic script did not much employ then the diacritical points, the word could be read فاقبله = "welcome him", or فاقتله "kill him"). The historian of Egypt, as-Suyuti[39] who reports it, adds that it was a tragedy that the governor designate in his suspicion read it the wrong way, got furious and returned to Madina to create a scandal in the town. The caliph swore to affirm that he meant welcoming and not killing, but that was of no avail. In the meanwhile the plotters sent an army from Egypt to menace Madina. The caliph could easily crush the insurrection, but he was too kind-hearted to believe that there was possibility of a plot. He even allowed the members of the Madinan garrison to proceed to Mecca for Hajj; and he rejected with thanks the offer of the governor of Syria to send reinforcements for his defence. There was no particular grudge in Madina against the aged caliph. It sufficed that al-Hasan and al-Husain go, at the demand of their father 'Ali, and patrol awhile the house of the caliph to discourage all frontal attack by the rebels. The plotters were bent upon executing their plan, so they jumped inside the house of the caliph from a back wall, and assassinated the caliph while he was fasting and reading the Quran; they even wounded grievously his wife who was alone in the room to intervene.

It is easier to win a war, much more difficult to win a peace. The insurgents got afraid of their folly. They were well aware of the different currents that were working in the body politic. In order to legitimate their action the leaders of the hypocrites went to 'Ali and insisted that he declared his caliphate and accepted their paying him homage. 'Ali refused first and said :

39. *Tadrib ar-Rawi*, p. 151.

> "Leave me and seek someone else because perspectives are dark and things are bewildering. You must know that if I give you a favourable reply, I shall lead you to what would seem right to me, and I shall hear no intercession or recommendation against the right. In fact I as a supporter *(vazir)* am better for you than as an emir"[40].

The insurgents vainly searched others and nobody was willing to take the risk of being accused of the complicity in the murder of the innocent caliph. The insurgents returned to 'Ali and so much insisted that he at last gave way; and addressing to two of the most eminent companions of the Prophet who also suggested 'Ali to accept the caliphate in those difficult conditions, he said :

> "By God! I have no desire of the caliphate, and the kingship has not the least importance in my eyes. It is you who invite me to accept it and push me to do that"[41].

'Ali had then no independent army of his, and it was the insurgents who "protected" him as their prisoner. The Madina garrison was away at Mecca for pilgrimage. When the news arrived in the provinces, it was a shock and everybody demanded that the culprits should be punished. The near relatives of 'Uthman were naturally more vehement and pressing, but 'Ali was helpless and asked them to wait until he is able to get the real liberty of action. He committed some political mistakes also : He left Madina for Iraq (thinking that he would thus get rid of the "protection" of the Egyptian insurgents; he dismissed certain governors, including Mu'awiya of Syria who was a near relative of 'Uthman, etc. Talha, Zubair and Mu'awiya began coveting each the caliphate, and they persuaded 'A'isha the venerated wife of the Prophet also to take active part in politics: as the "Mother of the Faithful" she demanded the justice against the murderers of 'Uthman; and a sizable army began to assemble. 'Ali also prepared to meet the new menace, but since all were good Muslims, it was easy to arrive at a peaceful settlement, and

40. Ash-Sharif ar-Radi, *Nahj al-Balagha*, I, 182, *khutba* No. 88.
41. Idem II, 210, khutba No. 200.

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nobody denied the eminence of 'Ali in the circumstances. In fact full agreement was reached after negotiation. But Ibn Saba a non-Muslim (or hypocrite) was there. As Tabari[42] reports his men treacherously made a night attack on the camp of 'Ali, coming as if from the camp of 'A'isha. The Battle of Jamal began in misunderstanding. Talha and Zubair were killed, and 'Aisha made prisoner, but the pious 'Ali sent her with great respect back to Madina. When she later knew the real facts, her regret was great, and she suffered from the shock all through the rest of her life.

After the victory over Talha-Zubair-A'isha group all had not finished. The Syrian army led by Mu'awiya was advancing. The battle of Siffin had to be faced. Meanwhile letters were exchanged between 'Ali and Mu'awiya, preserved by the Sh'ite work *Nahj al-Balagha* of ash-Sharif ar-Radi, and have great constitutional importance. The Sh'ites affirm that the Prophet had nominated 'Ali as his successor. Strangely enough 'Ali himself never refers to this decisive and unopposable argument. If 'Ali did not push his claim during the caliphate of Abu Bakr, 'Umar and 'Uthman, one may perhaps consider that 'Ali made a sacrifice and attached not the least importance to wordly ranks. But when he not only claimed the caliphate but went so far as to use armed forces to vindicate his claim, against Mu'awiya in particular, the complete absence of the reference to this argument leads one to believe that it is a later production. In fact in the exchange of letters just referred to, 'Ali insists only on the fact[43] that he is a near relative of the Prophet, that he has rendered more service to the cause of Islam in the past than his rival, and never to the argument that he had been nominated as successor by the Prophet.

Supposing that the *Nahj al-Balagha* has omitted the letter or the passage of the letter, of 'Ali to Mu'awiya in which this

42. anno 41 H.

43. *Nahj al-Balagha*, III, 8, No. 6.

argument was employed —which is scarcely possible— let us analyse the argument itself, which later writers put forward. It has two elements :

a) In the very early days of Islam once the Prophet convened a meeting of his clan at Mecca, and said : Whoever embraces my religion would be my successor. 'Ali alone rose up, and he was a minor then. Some of those who were present laughed and ironically said to Abu Talib : Now you are subjected to your own little son![44]

b) During the last months of his life, when the Prophet returned from his Farewel Pilgrimage and was camping at the lake of Khumm, he supported, 'Ali in a quarrel that had arisen between him and some of the soldiers that had gone along with him in an expedition, and said : To whomever I am *maula*, 'Ali is his maula[45].

There are other reports that explain the conversion of 'Ali in quite different manners[46]. Even supposing that the above report is the correct one, it is clear that many persons, besides 'Ali, could then declare their conversion; although that did not happen, but supposing that that had happened, could all of them become simultaneously the political successors of the Prophet ? Further it is not to neglect that at that time the Prophet had no political power, no State; his was then the spiritual kingdom. He could have offered succession in that realm alone. This seems to be the more plausible since in this realm there is no jealousy, and many kings or caliphs could simultaneously succeed to the master and teacher. As we have seen above, the Muslims have separated the politico-religious caliphate from the spiritual one, and in this last one 'Ali was in fact the immediate successor of the Prophet, recognized in the Qadiriya and other *silsilas;* all sunnis admit that. The celebrated saying of the Prophet, to console 'Ali during the compaign of Tabuk :

44. Tabari, *Ta'rikh*, I, 1183-4.

45. Ibn Hanbal, I, 118, 119, 152; IV, 281, 368, 370, 372, 373; V, 370.

46. Tabari, I, 1164-5.

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"Art thou not satisfied to be in the same relation with me as was Aaron with Moses?" (Ibn Hisham, p. 897) implies the same thing. In fact Moses was occupied with the political, legislative and administrative matters of the Jewish community, while Aaron was entrusted with the cult and other religious affairs.

As to the second argument, does *maula* really signify a successor? There is no proof. The term is used in the Quran very many times, in different senses, but never in the sense of heir-apparent or successor designated by the actual ruler. The Quranic uses are the following:

1. Your *maula* is the Hell, and it is really your *maula*. (57/15).
2. God is your *maula*, the best *maula* and the best helper. (8/40).
3. (the slave) ... who is dependent on his *maula*. (16/76).
4. To each We have assigned *maulas* in what the parents and near relatives leave (as heritage; i. e. the quality of maula or client is part of the heritage to be divided among the heirs). (4/33).
5. If you do not know the name of some Muslim's father, his is your brother and *maula*. (33/5).
6. I am afraid of my *maulas* after me while my own wife is sterile; so give me on Thy part (O God) a *wali* who should be my heir. (19/5).
7. The Day on which no *maula* would save in the least his *maula*. (44/41).

Only the last use, in the sense of friend, seems to apply to the report on the incident of Khumm, more so since 'Ali was declared to be the maula of the Prophet forthwith, and not that he would become his maula at his death.

The essential argument put forward by 'Ali in his letter to Mu'awiya says;

"Those who have paid me homage are the same as had paid homage to Abu Bakr, then to 'Umar and then to 'Uthman, and that also in the same conditions as were for those. Other people (in provinces) have no choice, and no right to reject the decisions of the Muhajirun and Ansar of the metropolis. If anybody goes out of their decision, one would by force of arms compel him to re-enter in the fold of the faithful. You know that I am innocent of the blood of 'Uthman, and it is your passion which pushes you to calumniation."[47]

When negotiations failed a battle took place at Siffin. It was stopped mid-way, and people agreed to have recourse to peaceful means, to decide the *casus belli*. Each party had to nominate a representative, and the two refrees should arbitrate according to the Quran as to who should be the caliph.

The arbitrators seem to have had all the liberty of decision. First they agreed to declare the two pretenders as deposed. One arbitrator then proposed the name of a very pious Muslim, 'Abdallah ibn 'Amr ibn al-'As, but unfortunately he was the son of this arbitrator, and so there was legitimate suspicion on the part of the other arbitrator who proposed another prestigious name, that of 'Abdallah ibn 'Umar, but his colleague did not agree. In the absence of documents as to the proceedings of the deliberations of the arbitration it is presumed that both agreed to depose both the pretenders and to invite the public to a fresh election. This is not at all sure. The known fact is that on the day of award, the representative of 'Ali declared that he deposed both the pretenders and ask people to make a new election; and the representative of Mu'awiya said that he confirmed Mu'awiya, and that his colleague had no right to depose except the one who had nominated him.

There was naturally confusion. 'Ali had right not to accept the award since it was not unanimous. Both sides prepared for

47. *Nahj al-Balagha*, III, 138-9.

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a new war, but in the meanwhile another complication arose, and a group of anarchists succeeded in mortally wounding 'Ali and grievously wounding Mu'awiya but who recovered after some treatment.

On his death-bed 'Ali made a testament : According to the Shi'ite[48] version, he nominated his eldest son al-Hasan to succeed him; according to Sunni[49] historians, he replied on a question : I neither command you to pay homage to al-Hasan nor prevent you from doing that.

If the Shi'ite report is correct, then nominating one's own son as heir-apparent becomes a *sunna* of the Orthodox Caliphs; Mu'awiya would in that case only copy this precedent and nominate his son Yazid (who at the time of nomination had no bad name at all; he was generous, intelligent, never drank wine[50] nor neglected prayers and fasting). Only novelty was that the nomination of Yazid took place not at the death bed but many years before, and the people were asked to pay homage to Yazid as an heir apparent, and they knew before hand what would happen. Reverting to 'Ali, when he succumbed to the wounds, al-Hasan was unanimously acknowledged caliph by those who acknowledged 'Ali, but soon they became so undisciplined and uncontrollable that they looted[51] even the tent of their caliph al-Hasan, who could escape with difficulty. He was so disheartened that he preferred making peace with Mu'awiya. Al-Hasan abdicated in favour of Mu'awiya on condition that he should be the heir-designate[52]. This was a happy conclusion and history names it "the year of Reunification" or of "Reconciliation". (Al-Hasan died before Mu'awiya, and so

48. Ibn 'Abd Rabbih, *al-'Iqd al-Farid*, ed. Bulaq, II, 351; cf also Mas'udi, *Muruj*, citing but refuting it.

49. Ibn Kathir, *al-Bidaya*, VII, 327; al-Hakim, *al-Mustadrak*, III, 79.

50. Ibn Kathir, *al-Bidaya*, VIII, 233, on the authority of Muhammad ibn al-Hanafiya, brother of al-Hasan and al-Husain, son of 'Ali from a wife other than Fatima.

51. Tabari, anno 40 H.

52. Ibn Kathir, *al-Bidaya*, VIII, 41; Abu'l-Faraj al-Isbahani, *Maqatil at-Talibiyin*, I, 58.

the clause of succession had no relevence, and as just said, Mu'awiya, in the interest of stability and to avoid wars of succession decided to nominate a successor and got it ratified by the public, a precaution which does not prevent people from neglecting and behaving as if they were free to claim caliphate).

We see that in case of 'Ali there was a sort of election, resembling partly to the case of Abu Bakr; Mu'awiya was not offered the caliphate but demanded of his provincial people to accept him as caliph, and being very popular in his province, he obtained their consent and by the help of his army and his diplomatic talents become the uncontested ruler of the vast Muslim realm. Al-Hasan's case is complicated by sectarian difference: according to Shi'tes he was nominated, and not elected; according to Sunnis he was elected, yet all agree that as a matter of fact he was recognized only by a part of the Muslims, not by all the provinces.

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1400th Anniversary of the Battle of Banu An-Nadir

Prophet of War Prophet of Mercy :

To be a model to be imitated, not only in spiritual and religious matters,—like beliefs and cult,—but also in temporal one, the Prophet of Islam was obliged to become an improvized general to wage defensive and punitive wars. Thus the Islamic war could become humane and a mercy unto humanity. In a separate book, *Battle fields of the Prophet Muhammad,* I have treated in detail this aspect of Prophet's political life. Here we are going to speak of a single aspect of a single war of this time. The purpose is to rectify a wide-spread mistake which owes to Ibn Is'haq,—or rather to his early copyist,—and this particularly for the strange fact that we are celebrating this very year the 1400th anniversary of this same historic war. (The rest of this book deals with the peaceful aspects of the statecraft).

The first decade of the first century of the Hijrah era (corresponding to 622-632 of the Christian era) is the most epoch-making period in the history of human society. It is in this short span of time that the Holy Prophet succeeded in communicating the last Divine Message for all walks of life, spiritual, material, moral, political and all else. It was in the year 2 Hijrah that he fought at Badr, in 3 Hijrah at Uhad, and now in Rabi-ul-Awwal 1404, there is the commemoration of battle with the Jews of Banu an-Nadir, in Medinah itself, in 4 Hijrah. Before giving details of this war, it may be useful to enumerate some of the forthcoming anniversaries in the near future : So next year in 1405 H. falls the anniversary of the war of Khandaq, in 1406 that of the Truce of Hudaibiyah, in 1407 that of the wars of Khaibar and of Mu'tah, in 1408 that of the Capture of Mecca, in 1409 that of the war of Tabuk against Byzantium, in 1410 that of the Farewell Pilgrimage, in 1411 that of the sad death of the Prophet and that of the institution of the Caliphate.

There is unanimity among historians, that the Holy Prophet went to see them, and when he found that there was a plot to assassinate him, he returned and then attacked them. But there is no unanimity as to why he went there ?

Ibn Is'haq says, at the offer of reward by the Meccan pagans, tribes living in Ar-Raji' and Bi'r Ma'unah attracted Muslim missionaries to come for explaining Islam to them, and they massacred them. By chance one member of the Bi'r Ma'unah group escaped, and when returning to Medinah, found en-route two members of the same tribe then had behaved traitorously at Bi'r Ma'unah, and managed to kill them in vengeance. He did not know that they had met the Holy Prophet and obtained from him a writ of safeguard. In order to pay the blood money of the involuntary murders, the Holy Prophet went to the Banu an-Nadir, to ask them to participate in the payment. (But the report gives no convincing explanation as to when the Jews had to pay for the fault of a Muslim).

The other report comes from as eminent narrators, Abdur-Razzaq, Ibn Marduyah, Abu Dawud, Baihaqi, Samhudi, Sha'mi and other Muhaddiths, and they say : It was at the instigation of the same Meccans and with the same tactics, the people of Banu an-Nadir sent a message to the Holy Prophet saying : we all have decided to embrace Islam, so please come along with three of your Companions and talk to three of our rabbis, and if these are satisfied, we shall all embrace Islam at once. The Holy Prophet agreed and fixed an appointment. It so happened that an Arab lady had married a Jew of this tribe. When she learnt the plot, she sent secretly the news to her brother who was a Muslim from among the Ansar. He at once ran to inform the Holy Prophet of the same, and could that just when the Holy Prophet was entering the Jewish quarter. Naturally he

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returned at once, and next day led his army, laid siege to their locality, and after two weeks of a bloodless compaign, they capitulated. The Holy Prophet treated them most leniently, and pardoned them, their persons and property remaining safe, with the right even to recuperate their debts from Muslim clients, on the only condition they emigrated from Medinah to some other place. On 600 camels they took even the doors of their houses, and settled in Khaiber, where they prepared for the terrible battle of Khandaq, which took place after one year, in 5 Hijrah.

May be Muslims all over the world commemorate this incident which has great lessons even today. Needless to add that the second of the two versions is more plausible.

— (With acknowledgement to *"The Muslim World"* weekly, Karachi, XX, 26 November 1983.)

The Teleguided Battles of Jamal and Siffin

Neither in Mecca, birth place of the Holy Prophet of Islam, nor in Madinah, his adopted country, were there states or kingdoms. Born in 569, and appointed by God in 609 to preach Islam, Muhammad of revered memory was to all appearance "forced" by circumstances to found a State. Persecuted by his co-citizens of Mecca, he came to Madinah as a "refugee". The perspectives were far from bright. The pagan Meccans, frustrated in the plot to assassinate the Prophet and finding him escaping them and reaching safe and sound to Madinah, would not leave him quiet even in exile; they sent ultimatum after ultimatum to inhabitants of Madinah either to kill him or expulse him. otherwise they would take necessary measures. (Cf *Sunan* of Abu Da'ud, 19/23, Banu al-Nadir; *Kitab al-Muhabbar* of Ibn Habib, p. 271-4).

One who had been sent by God as "a fine model to imitate" (*Qur'an* 33/21), had to react. So he first paid attention to rehabilitate hundreds of Meccan Muslims, who came as himself to Madinah as refugees with generally nothing with them except their dress on their bodies, The problem was disposed of in no time, and once for all, through the well-known Fraternization, each Meccan family became full member of a well-to-do Madinan family (Cf Ibn Hisham, *Sirah*, p. 344-5, ed. Europe.)

Next step: He convened a meeting of the representatives of all the tribes inhabiting the region of Madinah: Meccan refugees, Madinan Muslims, and non-Muslim Arabs, Christians and Jews of the place. (According to al-Bukhari 96/16/18, they met in

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the house of Anas Ibn Malik's parents). He proposed to establish a central organism, a confederal City-State. Most of those present agreed, including the Jews. For various reasons even non-Muslims consented that the Holy Prophet should be the head of this State. The rights and obligations, or powers were defined and distributed among the centre and the confederal units, and all put to writing. (Cf my book *The First Written-Constitution in the World).*

Encouraged by these happy developments, the Prophet then began to make excursions in the tribal settlements around Madinah, and proposed to them a military alliance : if anybody attacks you, we shall run to your help, and if anyone attacks us and if we ask you, you shall also come to our help; religious conflicts excluded. The text of several of these pacts has come down to us (Cf Ibn Sa'd, I/ii, p. 24, 26, 27 etc) and concern tribes living in the North, South-West and West of Madinah.

When this *mandala*—as the old Hindu political philosophers have suggested as ideal, that is to say create between oneself and the enemy a chain of friendly peoples—become a reality, the time came to avenge and punish Meccan pagans, who had murdered many Muslims, men and even women, just for having embraced Islam, and also done them material and economic damage. But the Prophet preferred a peaceful method, an economic pressure: carvans of the Quraysh, going to the North (Egypt, Syria and Iraq) should no more pass through the Islamic zone of Madinah and the territory of allies. The Meccans would not agree, and wanted to force through. This resulted in the battles of Badr, Uhud and *Khandaq* (Cf my book *Battlefields of the Prophet Muhammad).* When the Meccans lost all hope, the Prophet launched a peaceful counter-offensive. There was famine in Mecca region, and the Prophet suppressed the ban on export of victuals from Muslim Najd to Mecca, and sent the handsome amount of 500 gold coins as a contribution to help the poor in Mecca. Cut off from the northern countries, the

merchandises of Meccan traders were rotting in their depots. The Prophet offered to purchase those of Abu Sufyan, virtual king of Mecca, against the date fruits of Madinah (Cf for all these incidents Sarakhsi's *al-Mabsut* X, 91-92 and *Sharah al-Siyar al-Kabir*, 1, 70; Abu 'Ubayd, *Kitab al-Amwal*, para 631). Then he went to Mecca (Hudaybiyah) during the months of the Truce of God, with the determination to conclude a treaty of peace. There is reason to believe that the Prophet had even allowed Abu Sufyan secretly to traverse Islamic territory and go to Syria for trade, since he was not in Mecca during the peace negotiations at Hudaybiyah. In spite of great Jewish help in the battle of Khandaq, the Meccans accepted in Hudaybiyah to remain neutral in case of Muslim war with third parties (which made possible the invasion and liquidation of Khaybar, the Jewish stronghold).

Before completing the story of Mecca, a few words to explain why Jews became enemies of the Prophet. In spite of all good will and gestures of friendliness, the Jewish tribe of Banu al-Nadir plotted to assassinate the prophet; they invited him by saying : come along with three persons and discuss with our rabbis, and if they are convinced, we all shall embrace Islam. An Arab wife of a Jew disclosed it to the Prophet in time, and the Nadirites were expelled from Madinah (Cf *Musannaf* of 'Abd al-Razzaq, No. 7933; Samhudi, p. 298). It were they who, from Khaybar, organized the Meccan invasion of Khandaq. With the capture of Khaybar, the military and political danger was liquidated but not the hate of the Jews, which continued from generation to generation.

The truce of Hudaybiyah lasted for two years. Then the Meccans violated it, and the Prophet showed his military genius by occupying Mecca without bloodshed. The general amnesty proclaimed there by the Prophet was so unexpected and at such a right movement that the pagans of Mecca were very much touched, and over right practically all of them embraced

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Islam most sincerely. This demolished the prejudices of the idolaters all over Arabia, and they rallied to Islam.

Begun with only a part of the small town of Madinah, in only ten years the Islamic State extended to the confines of Arabia and southern parts of Palestine and Iraq, and when the Prophet breathed his last, he was governing over 3 million square kilometers of territory, and some half a million persons had then embraccd Islam. It is to recall that in the midst of political preoccupation, the Holy Prophet never forgot his spiritual mission, he wrote letters to different rulers inviting them to embrace his religion. One of these emissaries was put to death in the Byzantine territory, and when the emperor refused to amend, the war began with Byzantium.

At the sad demise of the Holy Prophet, Muslims in the "capital" of Madinah were unanimous to preserve the State so painfully established, but not so as to the individual who should succéed as caliph. There were three tendencies : (I) The Ansar of Madinah wanted that the caliph should be from the Khazraj group, but therein they were opposed by the Aws group. (II) The family of the Prophet, the Banu Hashim inclined to a dynastic rule, so that a near relative of the Prophet was to be elected. (III) The generality of the Muslims who preferred the election of the most competent person. In the elegy of Hassan ibn Thabit, at the death of the Prophet, there is clear reference to foreign intrigues also:

> The Christians and Jews of Yathrib (Madinah) have rejoiced
> When was laid in the grave the Buried One.
> (*Ansab* of al-Baladhuri, I, 593)

And also in the elegy composed by Abu'l-Haytham Ibn al-Taiyihan :

> The Christians are speaking ill, the hypocrites too,
> They are all parts of the same rope; the Jews also.
> All these three groups of men

> Are marching against us with lances and transgression.
> (*Kitab ar Riddah* of al-Waqidi, para 3).

An obiter dictum of the Holy Prophet, الائمة من قريش (Rulers are to be from among the Quraysh) was recalled at the right moment by an Ansarite, and at once recognized by others, and the Ansarites withdrew gracefully their candidature, and all present imposed on the unwilling Abu Bakr the burden of the caliphate. (Cf the same book of al-Waqidi). But nevertheless he left his mark: for three days continuously his heralds cried in the streets of Madinah· "Abu Bakr discharges you of the oath of allegeance, and demands of you to elect someone else (*Ansab* of al-Baladhuri, I, 587). Who would deserve caliphate morethan such a selfless person ? There is a well-known fact, accepted both by the Sunnites andS hi'ites, but nobody seems to have so far meditated on its implications. It is reported that on Abu Bakr's election to caliphate lady Fatimah, accompanied by her grand uncle 'Abbas (r. 'a) went to see Abu Bakr, and asked him not only to distribute the property left by the Holy Prophet among his heirs, but also to give the region of Fadak exclusively to her, etc. Can she go without the consent and even direction of her husband 'Ali (r. 'a) ? Why did she go to him, if not because she and her husband and her grand uncle, all recognized in him a lawful incumbent of the caliphate ? For if that was not so she had to tell Abu Bakr to quit the office in favour of her husband the so-called heir-presumptive of the Holy Prophet.

Abu Bakr's short tenure of office was filled with tremendously difficult problems, such as the war of apostates, codification of the Holy *Qur'an* in book form, and defensive wars with the Byzantium and the Sassanids. On his death bed he nominated a successor and recommended his name to the public in the following manner :

He asked 'Uthman ibn 'Affan to serve as secretary, and dictated to him his testament, saying : "I, Abu Bakr, in the last moments of his this-worldly life and first moments of his that-

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worldly life, when even a miscreant begins to believe, an agnostic impious gets the certitude, and the doubting and refusing person begins to confirm, nominate for you after me as successor....."At that movement he fainted with fatigue and exertion; fearing the worse, 'Uthman completed the phrase on his own initiative. But Abu Bakr soon recovered, and asked where he was in the testament. 'Uthman read the last phrase : "I nominate for you after me as successor "Umar ibn al-Khattab". Abu Bakr said : But I had not mentioned any name; you could have written your own name, and you merit it; anyhow God bless you for your piety and well-wishing honesty. Then he completed the dictation (see for full text, *Sunnan* of al-Bayhaqi. VIII, 149, *Ansab* of al-Baladhuri, II, 486, MS of Istanbul, my own *al-Watha'iq as-Siyasiyah*, N° 302/D). Then he asked the "police commissioner" to take it out, assemble the public and tell them : Here is the testament of your caliph, he asks you to pay homage to his successor whose name is mentioned in this sealed envelop. The confidence in Abu Bakr was so great, that they unhesitatingly accepted it.

After the death of Abu Bakr, the letter of testament was opened and the oath of allegeance for 'Umar was renewed unanimously. A dozen of years later, he was assassinated under a misunderstanding, and before breathing his last, he nominated a commission to select some one from among themselves as caliph. They were the *'Ashrah Mubashsharah*, (ten persons about whom the Prophet had given the good tiding that they would go to paradise). Two of them had died and 'Umar was dying. Of the remaining seven, the over-scrupulous 'Umar excluded one who was his near relative. Since the six could create a tie when voting he added a seventh member with restricted powers, to vote only when there was a tie, and even in that case to vote for the side in which 'Abd al-Rahman Ibn 'Awf should be found. This exceptional confidence in 'Abd al-Rahman was probably for the fact that when wounded, he was brought to his house, and then he desired to see 'Abd al-Rahman. "Fearing" that he was

going to be nominated: as successor, as soon as he entered and saluted, said: "No, no, do not nominate me, I do not want caliphate".

When 'Umar died, the commission met, and 'Abd al-Rahman suggested: Those who are not candidates, let them declare. With this elimination, there remained only 'Uthman and 'Ali. Thereupon, 'Abd al-Rahman suggested that they should agree to some one to select the caliph. Both agreed to the arbitration of 'Abd al-Rahman. Instead of making his personal choice, he consulted the public. In the words of Ibn Kathir (*Bidayah*, VII, 146) "he began consulting people individually and collectively, secretly and openly, he went even in houses and asked the opinion of women, he asked the opinion of even students in schools, even the travellers in transit in Madinah, not sparing even the Bedouins in the town. Two persons alone, viz 'Ammar and Miqdah were for 'Ali, all others for 'Uthman". After three days and nights of this incessant consultations, he convoked the general assembly to announce his "award". He first asked 'Ali and 'Uthman individually, one after the other : If I do not select you, do you promise to obey the other ? They said : Yes. Then he asked them publicly: If I select you, do you promise to follow the *Qur'an*, the *Hadith* and the precedents of your predecessors, Abu Bakr and 'Umar ? 'Uthman said: yes; 'Ali said: *Qur'an* and *Sunnah*, yes, but the precedents of Abu Bakr and 'Umar, not necessarily; I can deduce myself the law. Thereupon 'Abd al-Rahman raised his head towards the sky, and said: O God, Thou knowest that I have no interest except the well-being of the community and the Islam; and then he paid homage to 'Uthman. Others followed suit.

'Uthman's was a period of extra-ordinary prosperity for Islam and Muslims. In the year 27 H., his armies entered on the one hand in Spain and on the other to Transoxiana (Cf Tabari and Baladhuri). He was so pious that he would not accept the salary of the caliphate, thinking that he was rich enough and had no need of public money. His leniency was manifest all around, his generosity also.

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In the events of the years 33-35 H., Tabari relates that during the caliphate of 'Uthman a certain Yemenite Jew, named 'Abd Allah ibn Saba, *alias* Ibn as-Sauda' declared his conversion to Islam, ostentatious in piety, first to be in the mosque for morning prayer, last to leave the mosque after 'Isha' prayer, always indulged in supererogatory prayers, fasting, *tasbih*, etc. Then he began travelling in the vast Islamic empire to publicize his piety, Hijaz, Basrah, Kufah, Syria, Egypt. Everywhere he searched people who like him had declared Islam for opportunism yet in reality desiring to undermine it. When he found such persons, he confided to them his plan, simple and efficacious, and asked them to wait until they received his signal. There was a model letter, going from everywhere to trusted agents everywhere, purporting : Dear brother, you have a happy lot. Islam is alive in your region, governor is honest, administration is just, whereas in my region Islam is dead, nobody practices it, the governor is a drunkard and runs after girls, the administration is corrupt and no prospect of betterment. Thus repeated letters came from Madinah in every town, and were read by the agents in the mosques after prayers, and also letters came from everywhere to Madinah. At first people did not heed, but when the "situation" was confirmed by repeated and varied "testimonies", public began to get angry. Some of them brought the news to the caliph. As usual, he acted promptly, and consulted people what to do. It was decided to send from Madinah people of confidence and impartiality to tour and inquire in the regions said to have deviated from the path of Islam. Apparently they did not go in group but each to a definite region. According to Tabari, all the commissioners returned in due course to Madinah and reported that the accusations on the part of unknown persons had absolutely no basis, and that everything was good and normal,[1] except that one of the commissioners, 'Ammar ibn Yasir was belated and he remained in Egypt. Soon the governor of Egypt alerted the caliph : "Some persons in Egypt have lured 'Ammar and have grouped themselves around him. Among them 'Abd Allah Ibn

1. Unfortunately nothing was done in the provinces where many people continued to believe in antr- 'Uthmanian stories.

said : How can you now refuse, since it was you who wrote to us to come to Madinah ? He said : By God, I never wrote any thing to you ! They looked in astonishment on each other". In another narration, 'Ali said : "You have returned from enroute to Egypt on account of the pretended letter of 'Uthman; but the contingents of Basrah and Kufah, which had also returned to their countries, have returned at the same moment as you to Madinah; how did they know what had happened to you ? Surely the plot has been hatched in Madinah'". (Cf Tabari).

The season of the Haj approaching, the caliph 'Uthman gave leave to the soldiers of Madinah garrison to go to Mecca, and the capital was depleted of the forces of order. The rebels besieged the house of 'Uthman and would not allow him to lead the prayers in the Mosque. A certain Yemenite, al-Ghafiqi, the second of Ibn Saba, apparently a Jew like him—since after killing 'Uthman, he gave a kick to the *Qur'an* that 'Uthman was reading, and turned it down and it fell on the knees of the caliph, as is reported by Tabari—began leading the prayers. They burned the gate of caliph's house but could not penetrate it. So they along with Muhammad went to the other street and climbed the back-wall, and murdered the caliph who was reciting the *Qur'an* and injured his wife, cutting her fingers, and looting all that was in the house. First Muhammad wanted to assault, by catching hold the beard of the caliph, but when the aged 'Uthman mildy remarked: Were your father (Abu Bakr al-Siddiq) alive and present here..." he felt ashamed and returned. Others finished it and the irony of the fate they prevented. 'Uthman to be buried in the Muslim grave yard of al-Baqi', affirming that 'Uthman was a Jew ! In fact he was buried in a piece of land belonging to a Jew, and later when Mu'awiyah became caliph, he purchased that ground, along with the grave of the innocent martyr 'Uthman, and included it in the space of the grave-yard of al-Baqi'.

It was easy to win the "War" and kill the non-resisting, non-violent caliph, but how to win the peace ? They wanted to legalize their crime in order to escape the justice. They first

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went to 'Ali, and offered him the caliphate. He chased them out. They went to Talhah, then to Zubayr, but they would not receive them much less their caliphate. Then they found the solution; they announced in the streets of Madinah: People, campel 'Ali to accept the caliphate, and if you do not do that, we shall begin massacring you. That had the desired effect. People went to 'Ali, weeping and crying, and adjuring to save them from the unprincipled rebels. 'Ali had pity, but said : Caliphate is a public affair, I can accept it neither from you nor from them, people are to be consulted, and of course we require a caliph. So tomorrow, after morning prayer, I shall ask the people. He mounted the *minbar*, lamented on the innocent murder and asked people to select someone to become caliph. May be the first to cry were the agents of Ibn Saba: You alone deserve it, the best of Muslims, may be sincere Muslims said that. There were no other names advanced for the post, and people began taking oath of allegeance. The rebels noticed that some of the most eminent persons kept aloof and neutral, like Zayd ibn Thabit, Ibn 'Umar, Talhah, Zubayr Usamah, Suhayb etc. They feared most Talhah and Zubayr, so they brought them to the Mosque under their bayonets, and threatened to kill them if they refused to pay homage to 'Ali, they found others as inoffensive and disinterested, and thought they would take oath of allegeance later. So Talhah and Zubayr paid homage under duress and compulsion.

People expected that 'Ali would begin by arresting the assassins of 'Uthman. Days and week passed, (Madinah was under the control of the rebels) and 'Ali was unable to do anything without their consent.

Now another letter went from Madinah all over the Muslim empire : 'Ali has killed 'Uthman to become caliph, and that is why the criminals are not harassed. Slowly people began to believe that. More than anybody else the widow of the caliph 'Uthman and his children were interested in the march of the machinery of the justice. Despiting of that, she sent the blood-

stained dress of 'Uthman, and her own fingers cut by the rebels during the assault, to Mu'awiya, governor of Syria and a near relative of 'Uthman, charging him to avenge the murder. I personally suppose that Sabaite letters came from Syria to 'Ali to poison him against Mu'awiyah, saying for instance that he was against 'Ali and not only planning for his own caliphate, but was also a deviationist and a bad Muslim. Similar letters from different quarters must not fail to have the adverse effect when continued on a long-planned basis.

Anyhow, against the counsel of his best friends, 'Ali committed a political mistake : He not only informed the governors, including Mu'awiyah of the death of 'Uthman and his own election to caliphate, and demanded them to pay homage to the new caliph and take oath of allegeance from the public in their respective provinces, but also telling Mu'awiyah that he is removed from the governorship and that he should hand over the charge to a person sent by him ('Ali) from Madinah.

Certainly the Sabaites tried to poison Mu'awiyah against 'Ali, but he was not so easy to be swept away by them. In fact Mu'awiyah replied politely, and said that he would pay homage when the murderers of 'Uthman would be arrested and punished. We shall return to the subject again.

Letters (of Sabaites) went to 'Aishah, Hafsah and other wives of the Prophet to Mecca, telling them that 'Ali is refusing to punish the criminals, and that as Mothers of the Faithful, it was their duty and privilege to demand the head of the murderer of their child 'Uthman. Letters from Basrah seem to have come to them offering their help if the wives of the prophet would go to Basrah.

Soon Talhah and Zubayr left Madinah, and via Mecca wanted to go to Basrah. According to our historians, 'Ali was alarmed, and feared that if they captured the treasury of Basrah and if the army of the military garrison rallied to them, they

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would become a danger to the regime So he also hastened to Iraq. Hafsa was dissuaded by her brother Ibn 'Umar to take active part in politics; Aishah went along with her near relatives to Iraq. Her men and the army of 'Ali came face to face near Basrah, for the battle of Jamal.

There was misunderstanding created by the War of correspondence of the Sabaites. Some disinterested persons from among the Muslims served as intermediaries for negotiating peace, and in fact soon all was clarified, neither 'Ali was against punishing the murderers of 'Uthman, nor 'Aishah, Talhah or Zubayr had any personal ambitions. Peace was concluded, and people in both the camps slept for the first time in tranquility. The game was lost for Ibn Saba who was there, but he did not get disheartened : Very early in the morning, he and a group of his men entered in the camp of 'Aishah, and from their launched a night attack on the camp of 'Ali, who naturally thought that 'Aishah had treacherously violated the peace. Soon his men controlled the situation and now 'Aishah thought 'Ali had violated the pact. She bravely faced the situation, and remained seated on her camel till the last, whence the name of Battle of the Camel (Jamal) to this episode of the teleguided War. 'Aishah was surrounded and "captured" and her men fled. Naturally the situation was clarified, but too late. 'Aishah offered to 'Ali that hence forward she would help 'Ali against his "rival" Mu'awiyah. 'Ali thanked, and said he had no need of her, and persuaded her to return home to Madinah, and arranged for her transport with all the honour due to her.

Historians have reported a little incident which may be placed at this moment, before or soon after the battle of Jamal. One day some good Muslims reproached 'Ali that the assassins of 'Uthman were free in his army, and he is taking no action against them. 'Ali turned to his men, and said: Who are the murderers of 'Uthman ? Twelve thousand persons rose up and each one of them shouted : I am that ! It must be admitted that in spite

al-Sauda'....." The caliph commanded leniency. Tabari continues: "In the month of *Shawwal* 35 H. Ibn Saba (*alias* Ibn as-Sauda') left Egypt for Madinah accompanied by six hundred of his friends. Not to arouse suspicion, they announced that they were going to Mecca for pilgrimage. At the same moment others Sabaite groups also left Basrah and Kufah for Madinah. Certainly not all them were of Jewish origin, and there were also some good Intentioned Muslims lacking intelligence. The Sabaite propaganda had won them to the basic demand to depose the caliph 'Uthman, root of all evil, but there was no agreement among them as to who should be installed instead; the Egyptians wanted 'Ali, the Basrans desired Talhah and the Kufans al-Zubayr Ibn al-'Awwam. Ground was carefully prepared to win Muslim masses. In fact letters had gone from Madinah for instance to Egypt, signed by no less a personality than 'Ali himself, asking Egyptians to come to Madinah to help him chase out 'Uthman from the caliphate (Cf Tabari). Other letters signed by lady 'Aishah inviting people of provinces to rebell against 'Uthman (Cf Ibn Sa'd, III/i, p. 574) yet others signed by Talhah and Zubayr (Cf Ibn Kathir III, 175). We shall revert to the point presently.

When Mu'awiyah, governor of Syria-Palestine heard the march of suspicious people from different provinces to Madinah, he wrote to the caliph, please permit me to send a contingent of trusted soldiers from Syria to the capital. The caliph declined the offer.

When the rebels of Egypt, Basrah and Kufah reached Madinah they went first to their "beloved" leaders, 'Ali, Talhah, Zubayr and the wives of the Prophet, who all inquired why they had become so popular with these groups, they naturally refused the offer of the caliphate and chased them out of their houses. Then the Egyptians went directly to the caliph and complained about the behaviour of their governor, 'Uthman asked ; Whom do you want in his place? They said: Abu Bakr's

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son, Muhammad I—It is to be recalled that he was known in Madinah as *fasiq*, pervert; and his sister lady 'Aishah detested him openly.—'Uthman unhesitatingly and at once accepted the demand, wrote the letter of investiture, gave it to Muhammad and asked him to proceed to Egypt. The rebels did not at all expect that they would get their demand fulfilled so easily, they were nonplussed and had no other possibility except to return to Egypt, in the company of Muhammad, governor-designate. Then began notorious episode of 'Uthman's secretly sending word to the governor in place, to kill Muhammad when he comes to Egypt. Let the readers judge from the facts mentioned by Tabari, Ibn Hajar, *Zawa'id Musnad al-Bazaar*, MS of Pir Jhandoo/ Pakistan; the same, *al-Matalib al-Aliyah*, ed. Kuwait, para 4438: Ibn al-'Arabi, *al-'Awasim min al-Qawasim*, p. 96 among others :

The Egyptian contingent returned satisfied, and while they were along with Muhammad enroute, a man on fast dromedary crossed them and went towards Egypt, soon he returned towards Madinah and crossed them, then again he returned to go to Egypt, and each time he crossed them and passed near by them, and Muhammad did not take notice of him. Once one crossing them, he insulted them, cursed them and abused them. They asked : Who are you and what do you want ? He proudly said : I am the postman of the caliph and am carrying a letter to the governor of Egypt, and showed it to them. Intrigued thereby, Muhammad opened the letter, and found that the caliph had ordered the Governor in place in Egypt to put to death Muhammad when he comes there, and other punishments to his companions." —Is there any need to say that letter was also forged and sent by Ibn Saba ? —Naturally Muhammad was enraged, he returned to Madinah and created scandal, and would not believe 'Uthman when he assured on oath that he had not written that.

The Egyptian rebels then went to 'Ali and said : "Stand up and come with us to kill the caliph who has ordered without any reason to put us to death. 'Ali naturally refused. The Egyptians

of all his good will, 'Ali was not able to have a real freedom required of a ruler.

The victory of the battle of Jamal enhanced the prestige of 'Ali, but big provinces, like Syria etc. still escaped his control. The correspondence with Mu'awiyah continued. It has been preserved in the *Nahj al-Balaghah* of Sharif Radi; a Shi'ite production but which has prestige among Sunnis also. Before talking of it. a little digression :

A letter of 'Aishah was "published" in which she incited people to rebel against 'Uthman. After the latter's murder, when she learnt what was attributed to her, she said: "No, by the One in Whom believers believe and miscreants disbelieve, I never put the black on the white to these people upto the time I have taken seat on this place! (Ibn Sa'd, III/i, p. 57). In the version of Tabari: If you receive a whip, (unjustly). I cannot support; can I support the unjust sword with which 'Uthman (was killed)? You accused him but when you discovered him as pure as refined sugar, and as stainless as a washed piece of cloth, you killed him! Masruq says : I said: Mother, it is your act, you wrote to the people to rise against him ! 'Aishah said: I swear by the One in Whom the believers believe and the miscreants disbelieve, I never wrote to them anything black on the white! Al-A'mash adds, so people knew that something was falsely written under her name".

Mu'awiyah never aspired caliphate in the beginning, may be he felt himself too humble for that in the preserce of the *"sabiqn awwalin"*, but gradually he was pushed to that, and he says : "Ever since one day the Holy Prophet told me : O Mu'awiyah, if you get Power, be indulgent, I did cherish the hope one day to get it. We discern that in the letters exchanged between him and 'Ali and preserved in the *Nahj al-Balaghah*. In the beginning he demanded nothing but the punishment of the murder of 'Uthman, then gradually asks what right has 'Ali to caliphate, 'Ali says : (1) I have embraced Islam much before you and rendered services to the Prophet and

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to Islam much more than you. (2) I belong to the family of the Prophet, and the caliphate must be in the family in which God has put the prophethood. (3) I have been elected by those very people who elected Abu Bakr, 'Umar and 'Uthman. by the inhabitants of Madinah, and the provincials have nothing but to abide by the decision of the capital. —It is singular and significant that 'Ali never uses the argument which would have been binding on Mu'awiyah and on any Muslim, namely the Prophet has nominated me as his heir presumptive, (at Ghadir Khum). 'Ali was certainly capable to making the sacrifice during the caliphate of the first three caliphs, thinking that caliphate is a worldly thing, without least importance. But why to neglect this argument at the time when he was not only claiming the caliphate but even defending his "right" but the use of arms, and at the time when arguments were demanded from him to justify his right to caliphate ?

When negotiations failed to reconcile 'Ali and Mu'awiyah, and not only Syria but also several other regions willingly agreed to pay homage of caliphate to Mu'awiyah, War was inevitable, hence the battle of Siffin. I need not enter into details here, which are well-known to all readers of history. I would only refer to a fact closely connected with the heading of this article, the Jewish back-ground.

When the War was stopped by raising the copies of the *Qur'an*, and the matter was to be referred to the arbitration of God, of the Holy *Qur'an*, it was al-Ash'ath ibn Qays al-Kindi a person of Jewish origin who succeeded in persuading and even forcing 'Ali to agree to it as well as to the nomination of Abu Musa al-Ash'ari as his nominee (Cf Tabari, I, 3332-5), although there was tension between the two : Before the battle, 'Ali had sent his son al-Hasan to recruit volunteers in Basrah, and Abu Musa as governor hindered it, saying that civil War is a grave sin and the Prophet has ordered that Muslims must remain neutral if they can. Thereupon, in anger, 'Ali had dismissed him from the post. And soon after 'Ali was asked by his own friends

to nominate him as his representative in the council of arbitration.

After years of research, and without least preconceived notions, I have reached to the conclusion that the murder of 'Uthman and wars of the succession were a teleguided affair, and that 'Ali, Mu'awiyah, 'Aishah etc. all fought in good faith, and had absolutely no personal ambitions. There are many misunderstandings regarding the subsequent events of the *Tahkim* (arbitration), but that will be outside the purview of the theme of the article. So I present these conclusions to the scrutiny of the scholars, and I am open to correction.

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The Episode of the Project of a Written-Testament by the Prophet on His Death-Bed

Introduction

In the life of the Prophet there is an incident reported by practically all the authors of *Hadith* and *Sirah*—naturally with slight variants—to wit : "on his death-bed, the Prophet said : Bring me a sheet of paper, I shall prescribe for you, so that you do not go astray afterwards. Thereupon 'Umar said : 'The Prophet is overwhelmed by pain, whereas we possess the Book of God which suffices us.' But they differed, and the noise increased. So, (instead of saying: 'Silence, bring me the paper'), the Prophet said : 'Get ye hence'." (Cf. Bukhari in one of his five reports; see below).

In spite of the curiosity—even importance—of the matter, nobody to my knowledge seems to have ever tried to write a monograph on the subject in order to collect together all the details, go to the depth, and clarify all the obscurities, such as : whether the initiative had come from the Prophet or was that his reaction to the demand on the part of someone else ? Did 'Umar dare to the point of dissuading the Prophet from formulating his last will, or did 'Umar only grumble against those who importunated the Prophet even during his sickness, wanting only to spare his beloved and revered Prophet the pain of taking an unnecessary trouble ?

Before trying to investigate, it is perhaps worth while to bring into relief the internal self-contradiction, i.e. on the one hand the report affirms that in spite of his sickness, the Holy Prophet was in such a physical situation that he could give them order to get out, and on the other hand and at the same moment, the Prophet is supposed to be so weak in his illness that when he ordered something and some one present said : "No, don't do that", the same Prophet is unable to silence the supposed opposition.

I will not insist here on the other aspect of the story: Study the whole life of 'Umar ever since he embraced Islam, is there even a single case where 'Umar behaves with regard to the Prophet in a manner other than extreme respect and unreserved obedience ? If not, is it possible or even imaginable that when the Prophet orders definitely : "Do that", this same obedient and disciplined 'Umar says : "No, don't do that, and insists so much that a noisy quarrel develops ?

I begin with the end : my tentative conclusion at which I have arrived after long research, collecting many dispersed pieces to reconstruct the picture, is that it was al-'Abbas (uncle of the Prophet) who had come there on purpose, and although he did not dare curtly saying "nominate someone of your family to succeed to the political power", he requested in general and harmless terms: "Write down a last testament so that we do not go later astray", meaning thereby codifying the whole-day long sermon which the Prophet had just pronounced, and intending, during the dictation of the will, to suggest to the Prophet to be more precise as to his political succession; that 'Umar misunderstood him and thought that 'Abbas was wanting a resume of the entire teaching of Islam, and said : What need of it since we have the Holy *Qur'an* ? Naturally someone present did not appreciate the motive of 'Umar, and wanted to carry out all that the Prophet wanted. The very fact that the Prophet—who guarded all his faculties perfectly, and had the required energy to get his desires carried out—did not insist on writing a testament, is enough to conclude the demanding of the paper did not at all come from the initiative of the Prophet.

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While giving details as to how I reached the conclusion, I am conscious that this will not be the last word, but rather the pioneer work, paying the way for further studies and making other aspects or details to intervene in the discussion.

General Back-Ground

When the Prophet Muhammad inaugurated in 609 his Divinely inspired Mission, Islam, it was an unpleasant innovation in the country. So, for the very litle group of the converts there was neither peace in the society of their fatherland (Makkah), nor liberty to practise publicly their cult much less did they possess statal power to create envy and jealousy on the part of ambitious adventurers. But after his migration to Madinah, God established Muslims on the earth, and the territory of their State expanded with a bewildering rapidity. In fact in the first year of the Hijrah, it extended over only a small part of the town of Madinah, (not even the whole township), where, moreover, the Muslims constituted a small minority along with Jews, Christians and pagan Arabs. But only ten years later, when the Prophet breathed his last, he was governing over the entire Arabian Peninsula, and some Southern parts of both Syria and Iraq, over a territory of not less than three millions square kilometers (practically as much as the continent of Europe). Yes, 3 million square kilometers which mean that 845 Km^2 were added to the State territory daily at an average over the ten years. And what is still more impressive is the fact that the person who styled himself : "I am the Prophet both of war and mercy"[1] did not require for conquering these vast regions to shed the blood of even two persons per month, in the course of these ten years. In ten years there are 120 months, and in fact not even 200 enemies were killed on the fields of battles; losses of Muslims were much less.

The Arabian Peninsula is a continent. There, Yaman had a flourishing civilization before even the foundation of the city of Athens. So one could not avoid the rivalries not only between

1. Cf. Ibn Taymiah, *al-Siyasah al-Shari'ah*, p. 8, among others.

'Adnanite and Qahtanite tribes, but even Mudar and Rabi'ah (inside the 'Adnanites), even Quraysh and Sulaym (inside the Mudarites). In the year 4 H. the Muslim State was just stepping outside the town of Madinah, and already then al-Bukhari (64/28/6) reports that the "hero" of the massacre of a group of Muslim missionaries at Bi'r Ma'unah, viz. 'Amir Ibn al-Tufayl had threatened the Prophet : "Either that you content with the sway over people in plains and leave me to dominate those who dwell in houses constructed with stone and mortar, or that I be heir-designate; if not, I shall attack Madinah with a thousand (cavalry men) of the Ghatafan followed by another thousand". Somehow he came to Madinah to meet the Prophet, and the meeting seems to have been stormy, for in his pride, he had said to the Prophet : "I shall fill the space of your (country) by horses which have no hair, and by (young men) who have no beards; as many you have date-palms (in Madinah) as many shall I bring horses".[1] It was so serious, that the Prophet had said: "O Lord, protect me from him". This 'Amir was so haughty that very soon after when he fell ill of plague and despaired, he would not die on his bed; he asked his relatives to place him on his horse, and in fact it was thereon that he breathed his last, adds al-Bukhari. About the year 6 H., we have proofs of similar pretensions in Najd :

(a) The Prophet had invited gently the elderly Musaylimah the Imposter, in writing, to embrace Islam, and there came the following reply: "From Musaylimah, Messenger of God, to Muhammad, Messenger of God. *Salam* to thee. Whereafter, verily I have been made to participate along with thee in the Command (governing), and verily half of the earth should belong to us and half of the earth to the Quraysh. But verily the Qurayshites are a people that transgress".[2]

1. Cf. Ihsan al-Abbasi, *Sharh Diwan Labid*, p. 15, quoting from *Fasl al-Maqal fi Sharh al-Amthal*, fol. 61-62.
2. Cf. my *al-Watha'iq al-Siyasiyah*, No. 205/a, from Ibn Hisham, Tabari, Ibn Tulun, Halabi etc.

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(b) The Prophet wrote to Haudhah Ibn 'Ali Dhu'l-Taj of Yamamah : "With the name of God the Most Merciful, the All-Merciful. From Muhammad, Messenger of God, to Haudhah Ibn 'Ali. *Salam* to those who follow the Guidance. Know that my religion is going to dominate as far as the camels and horses can advance. So embrace Islam and thou shalt be safe, and I shall accord to thee all that is under thy hands. (seal) : Muhammad Rasul-Allah." There came the following reply : "How nice is that to which thou invitest me, and how beautiful : I am the poet of my people and their orator, and the Arabs fear me. So, accord me part of the Command and I shall follow thee".[1]

This desire for power and authority is human and natural, self-defence also. Of this latter category. Abu Sufyan (still non-Muslim), who had gone to Syria for commerce, and was by chance presented to Heraclius to inform him about his compatriot, the Prophet, and the impression he got was, according to al-Bukhari (1/1/6, 56/105, 56/122, 65/3/4) : "the king of the descendants of the Pale man (*malik Bani al-Asfar*, that is the Byzantine emperor), the chief of the kings of the Earth has begun to feel afraid of him (of the Prophet)".

If the non-Muslims of Arabia had ambition to have power, why to think that the totality of the Companions of the Prophet were exempt of this weakness ? Even if they did not dare give vent to their desires, one discerns in fact at least three trends : *Firstly* the Ansar, more particularly the Khazraj group, who relied on the fact that Madinah, the adopted country of the Prophet had helped him heart and soul for the propagation and defence of his Divine mission, while the Makkan Muhajirs were but refugees in Madinah; so the caliphate belonged to the Ansarites. There are reasons to suppose that the Khazrajites were more

1. Cf. my *al-Watha'iq*, No. 68-99/a, from Ibn Sa'd, Ibn Tulun, Halabi etc.

numerous than the Awsites; and also their leader, Sa'd ibn 'Ubadah, was more political-minded (as one sees in the Saqifah of the Banu Sa'idah, at the demise of the Prophet). There were, *secondly*, the Banu Hashim, near relatives of the Prophet, and they believed that the natural law of inheritance should be applied to caliphate, since State was subsidiary to the Messengership of God. Since God had honoured them by giving birth to His Messenger in their clan, the rulership of the Muslims should also belong to them, till the end of the world. The head of the clan was 'Abbas (uncle of the Prophet) and we shall presently see what he did. And *thirdly* the generality of the Muslims,—and the earliest Makkan converts were naturally more prominent among them,—and the Prophet himself had distinguished ten of them, giving once the good tiding that those ten were sure to go to Paradise. These were in favour of the most qualified person to succeed to the Prophet.

If jealousy was discernable even as early as the year 4 H., it could not but increase with the increase in the power and prosperity of the Muslim State especially after the reconquest of Makkah (in 8 H.) and the liberation of Ailah, Jarba, Adhruh etc. (Southern Palestine in 9 H.) from the Byzantine colonial yoke, followed by score of delegations from all over Arabia who had come to Madinah to declare their conversion and submission.

The Prophet had reached the age of 63 years; he had no surviving male issue; his health was dwindling. When he decided nevertheless to go to Makkah to perform his first and last Hajj, and even sent word everywhere recommending people to go to particularly that year to pilgrimage, and from above the Mount of Mercy (Jabal ar-Rahmah) he made hear his oration to about 140,000 Muslims, expectations were great but all that the Prophet preferred on that occasion to say may be resumed as under :[1]

Prediction of his approaching death—definition of the rights

1. For full text see my *Wathai'q* No. 287/a from Ibn Hisham etc.

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of human beings regarding not only persons and property but also honour—honesty in transactions—abolition of interest on loans—civil wars declared to be miscreance and emphatically prohibited—abolition of intercalary luni-solar calendar and institution of the purely lunar calendar—definition of rights and duties of married couples—abolition of class distinctions and establishment of the equality of men with superiority of the pious, even Arabs having no superiority over non-Arab Muslims, and demand of obeying the rightful authority if it is detained even by a negro with crippled nose—'after me hold fast to the *Qur'an* and the *Sunnah* of the Prophet.'

Ordinary people and superficial readers may not find therein much, but nevertheless the *Qur'an* declared it on the spot (5/3): "Today I have completed for you your religion and accomplished on you my favour and agreed that Islam should be your religion".

A deeper study of the historic oration shows that it is full of meaning for the political set-up, and the Prophet seems to be preparing the Arab masses to abandon the pagan mentality and get imbibed with Islam even in political matters. It is not revolutionary to teach that the Arabs have no excellence over the non-Arabs, 'obey your chief even if he is a Negro,' equality of all men and the superiority only of the pious ? The Prophet was realistic, and preferred gradual preparation of the public opinion. He could nominate somebody as heir apparent, but no elasticity would remain in Muslim political law in this way, since not only the *Qur'an* but even the *Sunnah* constituted law for Muslims for ever.

A few days later he returned to Madinah. En-route when he was camping at Lake Khumm, near Yanbu', he gave decision on another political problem; 'Ali was sent to Yaman, and with part of the taxes he had gone to Makkah to join the Prophet in the Hajj. Members of his suit misused the government property and employed pieces of cloth, received as tax, for their *ihram* garments of the pilgrimage. 'Ali ordered them to

return those clothes. They grumbled, and complained to the Prophet. At Khumm, the Prophet emphatically insisted on honesty even with public funds, and gave reason to 'Ali, and went so far as to say : "If I am *mawla* (chief) of somebody, 'Ali is his chief; O God be friend of those who are friends of 'Ali and be enemy of those who are his enemies". This meant that the authority of a subordinate is a delegation of authority from the superior, from the supreme chief : it is not to be contested.

There was no question of appointing a successor, a caliph; for the person directly concerned, 'Ali, never inferred that, and never argued on the basis of that declaration of the Prophet to merit caliphate. Not only at the time of the election of Abu Bakr, 'Umar and 'Uthman, but even during his armed conflict with Mu'awiyah. At that time a number of letters were exchanged between 'Ali and Mu'awiyah, in order peacefully to settle the question of Succession, and every party tried to convince the other, by giving arguments in his own favour. All these letters have been preserved in the famous Shi'ite work *Nahj al-Balaghah* by al-Sharif al-Radi. 'Ali gives all sorts of arguments (such as : I embraced Islam before you, served the cause of Islam more than you, belong to the family which God has chosen to give birth therein to His Prophet, etc.) but never a word on the incident of Khumm. Had 'Ali understood the Khumm declaration as designation of an heir-apparent, which time would have been better and more suitable to refer to it than this exchange of correspondence with Mu'awiyah ?

A few weeks after his return from the Hajj, the Prophet fell ill. One day he went even late in night to the grave yard of al-Baqi' along with a servant, prayed for the departed collaborators, and according to al-Baladhuri (*Ansab*, I, 544) he said there: "God has given me choice between a life here till the end of the world and between (immediate) reception by God, and I have preferred reception by God." Manifestly the Prophet was fully conscious of his responsibilities and of his approaching

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death; and the visit of the grave yard was part of the accomplishment of the duty, as we shall see presently. The political direction was certainly not less important than this giving expression of his gratitude to the friends long since dead.

His health deteriorated after this night excursion, but he continued to be occupied with urgent political affairs (such as sending a punitive expedition against the Byzantine territory under Usamah, sending instructions how to deal with apostasy of al-Aswad al-'Ansi in Yaman). Just three days before he expired, he asked his family to wash him with the water of seven different wells. Therewith he felt better, and aided by his cousins, he went to the Mosque early in the morning, mounted the pulpit and pronounced a very long sermon (*Bukhari* 64/83/18, 76/22) which continued till Zuhr prayer, which he led in congregation. After the prayer, he mounted the pulpit again and resumed his oration for a long time until he was completely exhausted, and had to be transported to his private room where he fainted.

Unfortunately nowhere the whole text is preserved; every historian and compiler of *Hadith* speaks of it but only partly. For the following extracts I am basing myself particularly on Bukhari, Ibn Hisham, Tabari and Baladhuri. The text is followed by my humble comment in the parallel column.

Before the Prophet came to the Mosque for the sermon, there occurred an important incident which merits to be brought into relief: 'Ali had gone to see the Prophet, and when he came out, people asked him how the Prophet felt? 'Ali said that by the grace of God, he was feeling better. Thereupon 'Abbas, uncle of the Prophet, took 'Ali aside and whispered: No, 'Ali, there are symptoms that after three days you would be subjected to the one who would wield the baton; so come along with me, we shall ask the Prophet who should succeed him to the political power, since he has nominated none so far. If it is to be from among us, we shall learn that, but if he is to be from among others than us, we shall be the witnesses of his

last will. 'Ali refused, and said: By God I shall not go to ask that, because if he does not give us the power today, nobody would ever give that to us in future.[1]

Soon after the Prophet came out and began what proved to be his last sermon. Hereunder the extracts and my comments:

1 After the praise of God, a long prayer for the martyrs of the battle of Uhud, who had given their lives for the cause of God.

1 As if a continuation of the visit of the grave yard of al-Baqi'; the first principle of State policy is that one should never forget the service rendered by others to us.

2 "There was a slave of God whom God had given the choice between continued prosperous life till the end of the world and between immediate reception of God, and that slave preferred reception by God."

2 Prediction of his fast approaching death; so directions in all seriousness.

3 Great praise of the Ansar for their exemplary conduct and eminent service rendered by them for the cause of Islam. "O Ansar, you may see after me preferences made prejudicial to you; support them till you meet me on the Lake Kawthar on Doomsday". "O Muhajirun, be enjoined to well treat the Ansar...if they do good, welcome it, and if they do the contrary, pardon them."

3 Prediction that the Ansar would not obtain political power (for reasons such as their internal dissension and factions in the Aws and Khazraj). And direction to the caliph how to behave (regarding for instance Sa'd ibn 'Ubadah al-Ansari who refused to offer allegeance both to Abu Bakr and 'Umar).

1. Cf. *Bukhari* 64/83/17; Ibn Hisham, p. 8011; Baladhuri, *Ansab*, 1, para 1147.

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4. Lavish praise of Abu Bakr. Direction to close back doors of all private houses opening inside the mosque, except that of Abu Bakr.	4 Recommendation to the Public for Abu Bakr as the best person in the interest of Islam, and that he should be able to enter directly in the first rank of the people and lead their prayer in congregation as *Imam*.
5 "Don't neglect the expedition against the Byzantine territory, and don't despise its young commander Usamah, who merits the honour even as merited his father, Zayd, whom also some persons disliked" (because he was a liberated slave).	5 No relaxation on the front even for difficulties on new fronts (extension of apostasy which was then feared), and equality of all Muslims and abolition of all class prejudices.
6 "Demand from me fearlessly all your rights if I have forgotten any, so that I go to God with a clean sheet". (He insisted very much on it, and came back to it again in the second session of his sermon, whereupon someone said: You owe me 5 *dirhams* for such and such a thing and you forgot to pay me. Thankfully the Prophet made immediate payment).	6 If the Chief abuses, the subordinates do much worse. Corruption should be excluded from State affairs by all means.
7 Nobody should cheat at the expense of public coffers, otherwise it would be a scandal on Doomsday. (There upon someone confessed that he had not remitted to the officer in charge of booties the 3 *dirhams* that he had obtained as booty during an expedition. After demanding what the reason was, and seeing that the excuse was acceptable, the Prophet pardoned him, and encashed the amount in question).	7 Importance of the religion as a sanction for public morality.

When the Prophet interrupted the sermon for exhaustion and was transported to his private room, soon the news came that he had fainted. Thereupon his uncle 'Abbas precipitated in the private room, and as uncle, it seems that he even neglected to ask permission to enter, since it is reported: "The Prophet was surrounded by his wives, and as 'Abbas entered, all of them pulled in precipitation their veils on their faces, except Maymunah",[1] This was so because Maymunah was a *mahram* to 'Abbas).[2] According to Ibn Hisham, 'Abbas participated there in the consultation as how to treat the Prophet. His jaws were tight closed, so they administered an Abyssinian medicament from rhe corners of his teeth. Soon the Prophet recovered and asked what they had done and what was their diagnosis. With the reply the Prophet was not pleased, and ordered that the same medicament should be administered to all those who had participated in treating him that way, except 'Abbas his uncle. (This shows that the Prophet was in full possession of his senses and will power). Gradually several other persons had entered the room to visit the Prophet, including 'Umar.

1. Ibn Hanbal, I, I 209; Abu Ya'la al-Mausili, quoted by Wali-ullah Dihlawi, *Izalat al-Khafa fi Khilafat al-Khulafa*, I, 103.
2. Maymunah was the sister of Umm al-Fadl, wife of 'Abbas. As one cannot unite two sisters in marriage, Maymunah was a "provisional" *mahram* of 'Abbas, so she did not require for that reason to cover her face with a veil before him.

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Bukhari and others report : "Then the Prophet said : Bring me paper and ink, I shall prescribe (something) for you, so that you do not go astray after me". (Was that in response to some request, or an *ab initio* order of the Prophet, the sources do not mention; see later). 'Umar intervened and said : "The Prophet is very tired, why put him to further fatigue ? The *Qur'an* would suffice us". Others—and according to Maqrizi, (*Imta*, I, 546), Mother of the Faithful Zaynab bint Jahsh and her lady companions—said : Why ? since the Prophet desires something, one should do that. The altercation created noise, and the Prophet said : One should not dispute in the presence ofaProphet, get ye all hence ?

Before scrutinizing the narration, a few quotations of Bukhari may help us in the study :

a) Ibn 'Abbas said : Thursday ! What a Thursday !—And then he began weeping bitterly, so much so that the ground became wet with his tears. And he continued :—On Thursday the sickness of the Prophet became more serious, and he said : Bring me writing material, I shall prescribe for you a writ, after which you will not go astray. But people quarrelled, whereas it is not proper to quarrel in the presence of a Prophet. They said : He has doted. The Prophet said : Leave me; for what I am in is better than what you ask me to. Close to his death, he made the will for three things : Expel the non-Muslims from the Arabian Peninsula; continue to offer presents to ambassadors as I used to do; and I have forgotten the third direction".[1]

b) Ibn 'Abbas said : Thursday. And what a Thursday ! The sickness of the Prophet became more serious. And he said: Bring me (what to write), and I shall prescribe for you a writ, whereafter you shall never go astray. They disputed, whereas it is not proper dispute in the presence of a Prophet. They said : Has he doted ? (No; so) ask him to explain himself. But they continued to retort. So he said : Leave me, for what I

1. *Bukhari*, 56/176/1.

am in is better than what you ask me to. And he enjoined as his will three things, and said : Expel the non Muslims from the Arabian Peninsula, and offer presents to ambassadors as I used to do. The (narrator or the Prophet ?) kept silent of the third. Or the (narrator) said I have forgotten that.[1]

c) Ibn Abbas said : When the Prophet was in agony, there were several men in the house. So the Prophet said: Bring (me what to write upon), I shall prescribe for you whereafter you shall not go astray. Some of them said : The pain has overwhelmed the Prophet, and you possess the *Qur'an*. The *Qur'an* suffices us. The *Ahl al-Bayt* (members of the family of the Prophet ? Persons present in the house ?) had divergence, and quarrelled : some saying : Bring what to write, he will prescribe for you whereafter you shall not go astray, and others saying the contrary. When the noise and divergence increased, the Prophet said : Get ye hence ![2]

It is to note that the reporter, Ibn 'Abbas was then a boy of ten years, and was not present; he must have learn details long afterwards from his father and other Companions of the Prophet. So he has them mixed up. Thursday is the day of the sermon of the Prophet, and the testament for the expulsion of the non-Muslims etc. concerns the last moment, Monday probably. Shedding tears profusely shows that he passionately believed certain things, for instance, the Prophet was going to nominate 'Abbas to succeed him, or at least nominate 'Ali for that purpose. Further, the phrase regarding the Prophet doting, in the report (a) and (b) has not the same sense.

Had the initative of asking for paper (or shoulder blade, as in a report), come from the Prophet himself, it is unthinkable that anybody could have intervened and opposed the Prophet. He would have immediately said : "Silence, bring the paper". Naturally Ibn 'Abbas would not say what role his father had played. Our reading is as follows :

1. *Bukhari*, 64/83/3.
2. *Bukhari*, 64/83/4.

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'Abbas was bent upon bringing the caliphate in the family of the Prophet, and when 'Ali refused to do as he wanted, he went alone to the Prophet, and when the latter recovered from the swoon, he asked the Prophet to dictate a testament, possibly the whole oration that he had made that day in the Mosque, and thought he could suggest during the dictation to be explicit regarding the caliphate, and rendering it in the family. 'Umar found it importunate in the health situation in which the Prophet was. So in all probability the Prophet did not order *ab initio* for paper or other writing-material, but it was in response to the request of his uncle 'Abbas for whom he had great regard and respect. Had it been from himself, nobody could have stopped him from getting it executed. He was in possession of all his faculties and will power, as we have seen that a few minutes earlier he had punished those who had treated him with medicaments which were not in conformity to his dignity He could not neglect a Divine revelation, from communicating it. The words "What I am in is better than what you ask me to", seem to mean : Leaving the question of caliphate with indirect allusions is better than formal precision. Otherwise the Muslim community would have been unable to change the constitutional set-up till the end of the world. For 'Abbas note further :

Three days after this famous Thursday, the Prophet breathed his last on the following Monday, as his uncle had predicted on the basis of symptoms in the sick person. As soon as the Prophet died 'Abbas hastened to his nephew 'Ali and said : "Tend me your hand, I shall pay you homage of caliphate; others will follow us". 'Ali refused and said : A prior public consultation is necessary for such affairs. And added : Who ignores our rights and privileges?[1] After the election of Abu Bakr to the office of caliph. Abbas went again to 'Ali, and taunted him: "I had told you !"[2]

1. Cf. Baladhuri, *Ansab*, I, para 1180, 1185.
2. Balachuri, para 1180.

Bukhari, Muslim and many others record a report of 'A'ishah, Mother of the Faithful : During his last illness, one day the Prophet told me: "Ask your father and brother to come to see me, so that I may write a writ (in his favour), for I fear that someone may desire a desire, or say : I am superior to him." A bit later he desisted and said : No need, neither God nor Muslims will accept anybody except Abu Bakr.[1]

To terminate, this very significant and noble report : After having willy nilly received the general oath of allegeance (*bay'ah*), Abu Bakr sent public criers for three consecutive days declaring in the streets : Abu Bakr discharges you from the oath, and asks you to select for the caliphate someone else better than him.[2]

Who would merit the office more: such a disinterested person or those who cherished ambitions for it ?

P. S.

I remember vaguely having read somewhere a narration in this connection, saying that "Somebody asked the Holy Prophet to dictate his will, and thereupon he said: Well bring paper and ink". But unfortunately I cannot recall where, and so I dare not insist upon it. Perhaps some reader of mine has a memory of it, and will inform the *Journal* for the lasting gratitude of science.

—*[With acknowledgement to The Journal of Pakistan Historical Society, Karachi*, XXXI/4, October, 1983).

1. Cf. *Bukhari* 75/16/2 and 93/51/1; *Muslim* ch. Fada'il as-Sahabah, II; Ibn Hanbal, *Musnad*, 6/106, 6/144; Baladhuri, *Ansab*, I, para 1086.
2. Cf. Baladhuri, *Ansab*, I, para 1189.

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ADDENDA

P. S.

In the chapter on Financial Administration, one must not forget to mention a small but very significant incident of the life of the Holy Prophet :

After successfully resisting the Judeo-Meccan onslaught on Madinah, in the war of Khandaq (Ditch), the Prophet launched a policy of appeasement with regard to the pagans of Mecca. Once there was a famine in the country, and among other humanitarian actions, he sent the handsome amount of five hundred gold coins, to be distributed among the poor in Mecca. (cf Sarakhsi, *al-Mabsut*, X, 91-92; the same, *Sharh as-Siyar al-Kabir*, I, 69, para 91; Ibn 'Abd al-Barr, *al-Isti'ab*, s. v. 'Amr ibn al-Faghwa'; and others). He is reported to have entrusted the amount to a certain 'Amr ibn al-Faghwa' al-Khuza'i, (with instructions how to distribute the amount in Mecca, through the intermediary of local chiefs, in order not to hurt their susceptibilities), and asked him : "Find out for you a companion for the journey, to and fro". So the transport and distribution of the aid to the poor in a foreign country was confided not to one but, in fact, to two joint-envoys.

This administrative measure of sending two persons, and not a single one, however trusted he may be, is significant, and a model for future less scrupulous generations. Since there is a precaution against possible human weakness and temptation of misappropriation on the part of the carrier of money, and also a security against bandits en route when the individual is off guard, and a control against fraud on the part of sub-ordinate officials regarding public funds.

M. H.

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